§§ 2012, 2013. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 2012, Pub. L. 92–513, title V, § 512, as added Pub. L. 94–163, title III, § 301, Dec. 22, 1975, 89 Stat. 916; amended Pub. L. 96–425, § 4(a)(2), Oct. 10, 1980, 94 Stat. 1823, related to reports to be submitted by Secretary to President and Congress regarding fuel flow instrument reading directly in miles per gallon, exemption from this subchapter for electric cars, and examination, by Secretary and Secretary of Labor, on exemption under section 2003(b) of this title. See section 32916 of Title 49, Transportation.

Section 2013, Pub. L. 92–513, title V, § 513, as added Pub. L. 100–494, § 6(a), Oct. 14, 1988, 102 Stat. 2448; amended Pub. L. 102–486, title IV, § 403(5), Oct. 24, 1992, 106 Stat. 2876, related to incentives for manufacturing alternative-fuel automobiles. See sections 32901, 32902, 32905, and 32906 of Title 49.

SUBCHAPTER VI—THEFT PREVENTION

§§ 2021 to 2034. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 2021, Pub. L. 92–513, title VI, § 601, as added Pub. L. 98–547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2755; amended Pub. L. 102–519, title III, § 301, Oct. 25, 1992, 106 Stat. 3393, defined terms for purposes of this subchapter. See section 33101 of Title 49, Transportation.

Section 2022, Pub. L. 92–513, title VI, § 602, as added Pub. L. 98–547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2756; amended Pub. L. 102–519, title III, §§ 302, 306(a), Oct. 25, 1992, 106 Stat. 3394, 3397, related to theft prevention standard. See sections 33102 to 33104 of Title 49.

Section 2023, Pub. L. 92–513, title VI, § 603, as added Pub. L. 98–547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2757; amended Pub. L. 102–519, title III, § 303, Oct. 25, 1992, 106 Stat. 3395, related to designation of high theft vehicle lines and parts. See section 33104 of Title 49.

Section 2024, Pub. L. 92–513, title VI, § 604, as added Pub. L. 98–547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2758, prescribed limitation on cost to manufacturer for compliance with section 2022 of this title. See section 33105 of Title 49.

Section 2025, Pub. L. 92–513, title VI, § 605, as added Pub. L. 98–547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2759; amended Pub. L. 102–519, title III, § 304, Oct. 25, 1992, 106 Stat. 3396, related to exemption from section 2022 of this title for vehicles equipped with antitheft devices. See section 33106 of Title 49.

Section 2026, Pub. L. 92–513, title VI, § 606, as added Pub. L. 98–547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2760, related to determination of compliance of manufacturer with section 2022 of this title. See section 33108 of Title 49.

Section 2026a, Pub. L. 92–513, title VI, § 607, as added Pub. L. 102–519, title III, § 306(a), Oct. 25, 1992, 106 Stat. 3397, related to verification of vehicle as legal salvage or junk vehicle. See section 33110 of Title 49.

Section 2026b, Pub. L. 92–513, title VI, § 608, as added Pub. L. 102–519, title III, § 306(c), Oct. 25, 1992, 106 Stat. 3397, related to determination and verification of passenger motor vehicle parts as not stolen. See section 33111 of Title 49.

Section 2026c, Pub. L. 92–513, title VI, § 609, as added Pub. L. 102–519, title III, § 306(e), Oct. 25, 1992, 106 Stat. 3398, related to National Stolen Auto Part Information System. See section 33109 of Title 49.

Section 2027, Pub. L. 92–513, title VI, § 610, formerly § 607, as added Pub. L. 98–547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2761; renumbered § 610 and amended Pub. L. 102–519, title III, §§ 305, 306(a), Oct. 25, 1992, 106 Stat. 3396, 3397, related to prohibited acts under this subchapter, persons exempt from such prohibitions, and chop shops. See sections 33114 and 33115 of Title 49.

Section 2028, Pub. L. 92–513, title VI, § 611, formerly § 608, as added Pub. L. 98–547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2762; renumbered § 611, Pub. L. 102–519, title III, § 306(a), Oct. 25, 1992, 106 Stat. 3397, related to enforcement of this subchapter. See section 33115 of Title 49.

Section 2029, Pub. L. 92–513, title VI, § 612, formerly § 609, as added Pub. L. 98–547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2763; renumbered § 612, Pub. L. 102–519, title III, § 306(a), Oct. 25, 1992, 106 Stat. 3397, related to confidentiality of information obtained by Secretary under this subchapter. See section 33116 of Title 49.

Section 2030, Pub. L. 92–513, title VI, § 613, formerly § 610, as added Pub. L. 98–547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2763; renumbered § 613, Pub. L. 102–519, title III, § 306(a), Oct. 25, 1992, 106 Stat. 3397, related to judicial review for persons adversely affected by standards or other rules under this subchapter. See section 33117 of Title 49.

Section 2031, Pub. L. 92–513, title VI, § 614, formerly § 611, as added Pub. L. 98–547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2763; renumbered § 614, Pub. L. 102–519, title III, § 306(a), Oct. 25, 1992, 106 Stat. 3397, prohibited State and local governments from establishing or continuing in effect a vehicle theft prevention standard not identical to that established under section 2022 of this title. See section 33118 of Title 49.

Section 2032, Pub. L. 92–513, title VI, § 615, formerly § 612, as added Pub. L. 98–547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2763; renumbered § 615, Pub. L. 102–519, title III, § 306(a), Oct. 25, 1992, 106 Stat. 3397, related to insurance reports and information on theft of motor vehicles.

Section 2033, Pub. L. 92–513, title VI, § 616, formerly § 613, as added Pub. L. 98–547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2765; renumbered § 616, Pub. L. 102–519, title III, § 306(a), Oct. 25, 1992, 106 Stat. 3397, related to voluntary vehicle identification standards. See section 33107 of Title 49.

Section 2034, Pub. L. 92–513, title VI, § 617, formerly § 614, as added Pub. L. 98–547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2765; renumbered § 617 and amended Pub. L. 102–519, title III, § 306(a), (e)[(f)], Oct. 25, 1992, 106 Stat. 3397, 3400, related to three-year and five-year studies regarding motor vehicle theft. See section 33113 of Title 49.

CHAPTER 46A—AUTOMOBILE TITLE FRAUD

§§ 2041 to 2044. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 2041, Pub. L. 102–519, title II, § 201, Oct. 25, 1992, 106 Stat. 3389, defined terms for purposes of this chapter. See section 30501 of Title 49, Transportation.

Section 2042, Pub. L. 102–519, title II, § 202, Oct. 25, 1992, 106 Stat. 3390, related to National Motor Vehicle Title Information System. See section 30502 of Title 49.

Section 2043, Pub. L. 102–519, title II, § 203, Oct. 25, 1992, 106 Stat. 3391, related to State participation in National Motor Vehicle Title Information System. See section 30503 of Title 49.

Section 2044, Pub. L. 102–519, title II, § 204, Oct. 25, 1992, 106 Stat. 3392, related to reporting requirements for operators of junk and salvage yards and insurance carriers. See sections 30504 and 30505 of Title 49.

CHAPTER 47—CONSUMER PRODUCT SAFETY

Sec.

§ 2051. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) an unacceptable number of consumer products which present unreasonable risks of injury are distributed in commerce;

(2) complexities of consumer products and the diverse nature and abilities of consumers using them frequently result in an inability of users to anticipate risks and to safeguard themselves adequately;

(3) the public should be protected against unreasonable risks of injury associated with consumer products;

(4) control by State and local governments of unreasonable risks of injury associated with consumer products is inadequate and may be burdensome to manufacturers;

(5) existing Federal authority to protect consumers from exposure to consumer products presenting unreasonable risks of injury is inadequate; and

(6) regulation of consumer products the distribution or use of which affects interstate or foreign commerce is necessary to carry out this chapter.

(b) The purposes of this chapter are—

(1) to protect the public against unreasonable risks of injury associated with consumer products;

(2) to assist consumers in evaluating the comparative safety of consumer products;

(3) to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

(Pub. L. 92–573, § 2, Oct. 27, 1972, 86 Stat. 1207.)

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–314, title II, § 239(a), Aug. 14, 2008, 122 Stat. 3076, provided that:

''(1) IN GENERAL.—Except as otherwise specifically provided in this Act [see Short Title of 2008 Amendment note below], this Act and the amendments made by this Act shall take effect on the date of enactment of this Act [Aug. 14, 2008].

''(2) CERTAIN DELAYED EFFECTIVE DATES.—The amendments made by sections 103(c) [amending section 2063 of this title] and 214(a)(2) [amending section 2064 of this title] shall take effect on the date that is 60 days after the date of enactment of this Act. Subsection (c) of section 42 of the Consumer Product Safety Act [section 2089(c) of this title], as added by section 232 of this Act, and the amendments made by sections 216 [amending sections 2066 and 2068 of this title] and 223(b) [amending section 2066 of this title] shall take effect on the date that is 30 days after the date of enactment of this Act.''

EFFECTIVE DATE

Pub. L. 92–573, § 34, Oct. 27, 1972, 86 Stat. 1233, provided that: ''This Act [enacting this chapter] shall take effect on the sixtieth day following the date of its enactment [Oct. 27, 1972], except—

''(1) sections 4 and 32 [sections 2053 and 2081 of this title] shall take effect on the date of enactment of this Act [Oct. 27, 1972], and

''(2) section 30 [section 2079 of this title] shall take effect on the later of (A) 150 days after the date of enactment of this Act [Oct. 27, 1972], or (B) the date on which at least three members of the Commission first take office.''

SHORT TITLE OF 2013 AMENDMENT

Pub. L. 112–266, § 1, Jan. 14, 2013, 126 Stat. 2437, provided that: ''This Act [enacting section 2056c of this title and provisions set out as notes under section 2056c of this title] may be cited as the 'Drywall Safety Act of 2012'.''

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–314, § 1(a), Aug. 14, 2008, 122 Stat. 3016, provided that: ''This Act [enacting sections 1278a, 1477, 2053a, 2055a, 2056a, 2056b, 2057c, 2076b, 2086 to 2089, and 8008 of this title, amending sections 1191, 1193, 1194, 1196, 1201 to 1204, 1261 to 1266, 1269 to 1276, 1278, 1472, 2052, 2054, 2055, 2058, 2060, 2063 to 2070, 2073, 2076, 2077 to 2079, 2081, 2082, 8002, and 8003 of this title, enacting provisions set out as notes under this section and sections 1194, 2053, 2060, 2063, 2066, 2069, and 2076 of this title, amending provisions set out as notes under sections 401 and 1261 of this title and section 1113 of Title 31, Money and Finance, and repealing provisions set out as a note under section 2053 of this title] may be cited as the 'Consumer Product Safety Improvement Act of 2008'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–608, § 1, Nov. 16, 1990, 104 Stat. 3110, provided that: ''This Act [enacting sections 2076a and 2084 of this title, amending sections 1193, 1194, 1262, 1274, 2053, 2055, 2056, 2058, 2061, 2064, 2066, 2069, 2077, and 2081 of this title, and enacting provisions set out as notes under sections 2053, 2054, 2056, 2076, and 2084 of this title] may be cited as the 'Consumer Product Safety Improvement Act of 1990'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–35, title XII, § 1201(a), Aug. 13, 1981, 95 Stat. 703, provided that: ''This subtitle [subtitle A

(§§ 1201–1215) of title XII of Pub. L. 97–35, enacting sections 1204, 1276, 2077, and 2083 of this title, amending sections 1193, 1201, 1262, 1263, 1274, 2052, 2054 to 2058, 2060, 2061, 2064, 2069, 2072, 2073, 2076, 2080, and 2081 of this title, repealing sections 1204, 1475, 2059, 2062, and 2077 of this title, and enacting provisions set out as a note under section 2052 of this title] may be cited as the 'Consumer Product Safety Amendments of 1981'.''

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–319, § 1, July 11, 1978, 92 Stat. 386, provided: ''That this Act [enacting section 2082 of this title, amending section 2068 of this title, and enacting provision set out as a note under section 2082 of this title] may be cited as the 'Emergency Interim Consumer Product Safety Standard Act of 1978'.''

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–284, § 1, May 11, 1976, 90 Stat. 503, provided that: ''This Act [amending sections 1193, 1203, 1204, 1261, 1471, 1476, 2052, 2053, 2056, 2058 to 2060, 2064, 2068, 2069, 2071 to 2073, 2075, 2076, 2078, 2079, and 2081 of this title, and section 1114 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under sections 1193, 1261, and 2080 of this title] may be cited as the 'Consumer Product Safety Commission Improvements Act of 1976'.''

SHORT TITLE

Pub. L. 92–573, § 1, Oct. 27, 1972, 86 Stat. 1207, provided that: ''This Act [enacting this chapter, amending sections 5314 and 5315 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under this section] may be cited as the 'Consumer Product Safety Act'.''

AUTHORITY TO ISSUE IMPLEMENTING REGULATIONS

Pub. L. 110–314, § 3, Aug. 14, 2008, 122 Stat. 3017, provided that: ''The Commission may issue regulations, as necessary, to implement this Act [see Short Title of 2008 Amendment note above] and the amendments made by this Act.''

SEVERABILITY

Pub. L. 110–314, title II, § 239(b), Aug. 14, 2008, 122 Stat. 3076, provided that: ''If any provision of this Act [see Short Title of 2008 Amendment note above] or the amendments made by this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.''

Pub. L. 92–573, § 33, Oct. 27, 1972, 86 Stat. 1233, provided that: ''If any provision of this Act [see Short Title note above], or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.''

PREEMPTION

Pub. L. 110–314, title II, § 231, Aug. 14, 2008, 122 Stat. 3070, provided that:

''(a) RULE WITH REGARD TO PREEMPTION.—The provisions of sections 25 and 26 of the Consumer Product Safety Act (15 U.S.C. 2074 and 2075, respectively), section 18 of the Federal Hazardous Substances Act ([Pub. L. 86–613] 15 U.S.C. 1261 note), section 16 of the Flammable Fabrics Act (15 U.S.C. 1203), and section 7 of the Poison Packaging Prevention Act of 1970 [Poison Prevention Packaging Act of 1970] (15 U.S.C. 1476) establishing the extent to which those Acts preempt, limit, or otherwise affect any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law may not be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation thereunder, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation. In accordance with the provisions of those Acts, the Commission may not construe any such Act as preempting any cause of action under State or local common law or State statutory law regarding damage claims.

''(b) PRESERVATION OF CERTAIN STATE LAW.—Nothing in this Act [see Short Title of 2008 Amendment note above] or the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.] shall be construed to preempt or otherwise affect any warning requirement relating to consumer products or substances that is established pursuant to State law that was in effect on August 31, 2003.''

DEFINITIONS

Pub. L. 110–314, § 2(a), Aug. 14, 2008, 122 Stat. 3017, provided that:

''(a) DEFINED TERMS.—As used in this Act [see Short Title of 2008 Amendment note above]—

''(1) the term 'appropriate Congressional committees' means the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate; and

''(2) the term 'Commission' means the Consumer Product Safety Commission.''

§ 2052. Definitions

(a) In general

In this chapter:

(1) Appropriate Congressional committees

The term ''appropriate Congressional committees'' means the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2) Children's product

The term ''children's product'' means a consumer product designed or intended primarily for children 12 years of age or younger. In determining whether a consumer product is primarily intended for a child 12 years of age or younger, the following factors shall be considered:

(A) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.

(B) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.

(C) Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.

(D) The Age Determination Guidelines issued by the Commission staff in September 2002, and any successor to such guidelines.

(3) Commerce

The term ''commerce'' means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(4) Commission

The term ''Commission'' means the Consumer Product Safety Commission, established by section 2053 of this title.

(5) Consumer product

The term ''consumer product'' means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include—

(A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer,

(B) tobacco and tobacco products,

(C) motor vehicles or motor vehicle equipment (as defined by section 30102(a)(6) and (7) of title 49),

(D) pesticides (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]),

(E) any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1986 [26 U.S.C. 4181] (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article,

(F) aircraft, aircraft engines, propellers, or appliances (as defined in section 40102(a) of title 49),

(G) boats which could be subjected to safety regulation under chapter 43 of title 46; vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in section 2101(1) of title 46) to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under any statute referred to in this subparagraph,

(H) drugs, devices, or cosmetics (as such terms are defined in sections 201(g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321(g), (h), and (i)]), or

(I) food. The term ''food'', as used in this subparagraph means all ''food'', as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321(f)], including poultry and poultry products (as defined in sections 4(e) and (f) of the Poultry Products Inspection Act [21 U.S.C. 453(e) and (f)]), meat, meat food products (as defined in section 1(j) of the Federal Meat Inspection Act [21 U.S.C. 601(j)]), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act [21 U.S.C. 1033]).

Such term includes any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, which is customarily controlled or directed by an individual who is employed for that purpose and who is not a consumer with respect to such device, and which is not permanently fixed to a site. Such term does not include such a device which is permanently fixed to a site. Except for the regulation under this chapter or the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.] of fireworks devices or any substance intended for use as a component of any such device, the Commission shall have no authority under the functions transferred pursuant to section 2079 of this title to regulate any product or article described in subparagraph (E) of this paragraph or described, without regard to quantity, in section 845(a)(5) of title 18. See sections 2079(d)[1] and 2080 of this title, for other limitations on Commission's authority to regulate certain consumer products.

(6) Consumer product safety rule

The term ''consumer product safety rule'' means a consumer products safety standard described in section 2056(a) of this title, or a rule under this chapter declaring a consumer product a banned hazardous product.

(7) Distribute in commerce; distribution in commerce

The terms ''to distribute in commerce'' and ''distribution in commerce'' mean to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(8) Distributor

The term ''distributor'' means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product.

(9) Import; importation

The terms ''import'' and ''importation'' include reimporting a consumer product manufactured or processed, in whole or in part, in the United States.

(10) Manufactured

The term ''manufactured'' means to manufacture, produce, or assemble.

(11) Manufacturer

The term ''manufacturer'' means any person who manufactures or imports a consumer product.

(12) Private labeler

(A) The term ''private labeler'' means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(B) A consumer product bears a private label if (i) the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

[1] See References in Text note below.

(13) Retailer

The term ''retailer'' means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.

(14) Risk of injury

The term ''risk of injury'' means a risk of death, personal injury, or serious or frequent illness.

(15) State

The term ''State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands.

(16) Third-party logistics provider

The term ''third-party logistics provider'' means a person who solely receives, holds, or otherwise transports a consumer product in the ordinary course of business but who does not take title to the product.

(17) United States

The term ''United States'', when used in the geographic sense, means all of the States (as defined in paragraph (10)).[2]

(b) Common carriers, contract carriers, third-party logistics provider, and freight forwarders

A common carrier, contract carrier, third-party logistics provider, or freight forwarder shall not, for purposes of this chapter, be deemed to be a manufacturer, distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business as such a carrier or forwarder.

(Pub. L. 92–573, §3, Oct. 27, 1972, 86 Stat. 1208; Pub. L. 94–284, §3(b), (d), May 11, 1976, 90 Stat. 503; Pub. L. 97–35, title XII, §1213, Aug. 13, 1981, 95 Stat. 724; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 110–314, title II, §235(a)–(c)(1), Aug. 14, 2008, 122 Stat. 3074.)

REFERENCES IN TEXT

Section 2079(d) of this title, referred to in subsec. (a)(5), was repealed by Pub. L. 110–314, title II, §237, Aug. 14, 2008, 122 Stat. 3076.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (a)(5)(D), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

Title 52 of the Revised Statutes, referred to in subsec. (a)(5)(G), consisted of R.S. §§4399 to 4500, which were classified to sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230 to 234, 239, 240, 361, 362, 364, 371 to 373, 375 to 382, 384, 385, 391, 391a, 392 to 394, 399 to 404, 405 to 416, 435 to 440, 451 to 453, 460, 461 to 463, 464, 466, 467 to 482, and 489 to 498 of former Title 46, Shipping. For complete classification of R.S. §§4399 to 4500 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46, Shipping, by Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, Shipping, see Disposition Table preceding section 101 of Title 46.

The Federal Hazardous Substances Act, referred to in the provisions following subsec. (a)(5)(I), is Pub. L. 86–613, July 12, 1960, 74 Stat. 372, which is classified generally to chapter 30 (§1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

For definition of Canal Zone, referred to in subsec. (a)(15), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

In subsec. (a)(5)(C), (F), ''section 30102(a)(6) and (7) of title 49'' substituted for ''sections 102(3) and (4) of the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1391(3) and (4)]'' and ''section 40102(a) of title 49'' substituted for ''section 101 of the Federal Aviation Act of 1958 [49 App. U.S.C. 1301]'' on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

In subsec. (a)(5)(G), ''chapter 43 of title 46'' and ''section 2101(1) of title 46'' substituted for ''the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 et seq.)'' and ''section 3(8) of the Federal Boat Safety Act of 1971 [46 U.S.C. 1452(8)]'', respectively, on authority of Pub. L. 98–89, §2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §235(b)(2)–(4), realigned margins, inserted par. headings, reordered pars. in alphabetical order based on headings of pars., and renumbered pars. as so reordered.

Pub. L. 110–314, §235(b)(1), which directed amendment of subsec. (a) by substituting subsec. heading and introductory provisions for ''for purposes of this chapter:'', was executed by making the substitution for ''For purposes of this chapter:'' to reflect the probable intent of Congress.

Subsec. (a)(15) to (17). Pub. L. 110–314, §235(a), added pars. (15) defining ''appropriate Congressional committees'', (16) defining ''children's product'', and (17) defining ''third-party logistics providers''.

Subsec. (b). Pub. L. 110–314, §235(b)(5), (c)(1), inserted heading and inserted ''third-party logistics provider,'' after ''contract carrier,'' in text.

1986—Subsec. (a)(1)(E). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1981—Subsec. (a)(1). Pub. L. 97–35 inserted provisions that term ''consumer product'' includes any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, which is customarily controlled or directed by an individual who is employed for that purpose and who is not a consumer with respect to such device, and which is not permanently fixed to a site and that such term does not include such a device which is permanently fixed to a site.

1976—Subsec. (a)(1). Pub. L. 94–284 substituted in subpar. (D) ''pesticides'' for ''economic poisons'', and in provision following subpar. (I) ''other limitations'' for ''limitations'', and inserted provision which limited the authority of the Commission to regulate any product or article described in subpar. (E).

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–35, title XII, §1215, Aug. 13, 1981, 95 Stat. 724, provided that:

''(a) Except as provided in subsection (b), the amendments made by this subtitle [see Short Title of 1981 Amendment note set out under section 2051 of this title] shall take effect on the date of the enactment of this Act [Aug. 13, 1981].

[2] So in original. Probably should refer to paragraph (15).

''(b) The amendments made by section 1207 [enacting sections 1204, 1276, and 2083 of this title and amending section 2076 of this title] shall apply with respect to consumer product safety rules under the Consumer Product Safety Act [this chapter] and regulations under the Federal Hazardous Substances Act [section 1261 et seq. of this title] and the Flammable Fabrics Act [section 1191 et seq. of this title] promulgated by the Consumer Product Safety Commission after the date of the enactment of this Act [Aug. 13, 1981]; and the amendments made by sections 1202, 1203, and 1206 of this subtitle [enacting section 2077 of this title and amending sections 1193, 1262, 2056, 2057, 2058, and 2080 of this title] shall apply with respect to regulations under the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act for which notices of proposed rulemaking are issued after August 14, 1981.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 2053. Consumer Product Safety Commission

(a) Establishment; Chairman

An independent regulatory commission is hereby established, to be known as the Consumer Product Safety Commission, consisting of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. In making such appointments, the President shall consider individuals who, by reason of their background and expertise in areas related to consumer products and protection of the public from risks to safety, are qualified to serve as members of the Commission. The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, from among the members of the Commission. An individual may be appointed as a member of the Commission and as Chairman at the same time. Any member of the Commission may be removed by the President for neglect of duty or malfeasance in office but for no other cause.

(b) Term; vacancies

(1) Except as provided in paragraph (2), (A) the Commissioners first appointed under this section shall be appointed for terms ending three, four, five, six, and seven years, respectively, after October 27, 1972, the term of each to be designated by the President at the time of nomination; and (B) each of their successors shall be appointed for a term of seven years from the date of the expiration of the term for which his predecessor was appointed.

(2) Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of this term until his successor has taken office, except that he may not so continue to serve more than one year after the date on which his term would otherwise expire under this subsection.

(c) Restrictions on Commissioner's outside activities

Not more than three of the Commissioners shall be affiliated with the same political party. No individual (1) in the employ of, or holding any official relation to, any person engaged in selling or manufacturing consumer products, or (2) owning stock or bonds of substantial value in a person so engaged, or (3) who is in any other manner pecuniarily interested in such a person, or in a substantial supplier of such a person, shall hold the office of Commissioner. A Commissioner may not engage in any other business, vocation, or employment.

(d) Quorum; seal; Vice Chairman

No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission, but three members of the Commission shall constitute a quorum for the transaction of business, except that if there are only three members serving on the Commission because of vacancies in the Commission, two members of the Commission shall constitute a quorum for the transaction of business, and if there are only two members serving on the Commission because of vacancies in the Commission, two members shall constitute a quorum for the six month period beginning on the date of the vacancy which caused the number of Commission members to decline to two. The Commission shall have an official seal of which judicial notice shall be taken. The Commission shall annually elect a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the office of the Chairman.

(e) Offices

The Commission shall maintain a principal office and such field offices as it deems necessary and may meet and exercise any of its powers at any other place.

(f) Functions of Chairman; request for appropriations

(1) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (A) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman), (B) the distribution of business among personnel appointed and supervised by the Chairman and among administrative units of the Commission, and (C) the use and expenditure of funds.

(2) In carrying out any of his functions under the provisions of this subsection the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(3) Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Commission may not be submitted by the Chairman without the prior approval of the Commission.

(g) Executive Director; officers and employees

(1)(A) The Chairman, subject to the approval of the Commission, shall appoint as officers of the Commission an Executive Director, a General Counsel, an Associate Executive Director for Engineering Sciences, an Associate Executive Director for Epidemiology, an Associate Executive Director for Compliance and Administrative Litigation, an Associate Executive Director for Health Sciences, an Associate Executive Director for Economic Analysis, an Associate Executive Director for Administration, an Associate Executive Director for Field Operations, a Director for Office of Program, Management, and Budget, and a Director for Office of Information and Public Affairs. Any other individual appointed to a position designated as an Associate Executive Director shall be appointed by the Chairman, subject to the approval of the Commission. The Chairman may only appoint an attorney to the position of Associate Executive Director of Compliance and Administrative Litigation except the position of acting Associate Executive Director of Compliance and Administrative Litigation.

(B)(i) No individual may be appointed to such a position on an acting basis for a period longer than 90 days unless such appointment is approved by the Commission.

(ii) The Chairman, with the approval of the Commission, may remove any individual serving in a position appointed under subparagraph (A).

(C) Subparagraph (A) shall not be construed to prohibit appropriate reorganizations or changes in classification.

(2) The Chairman, subject to subsection (f)(2), may employ such other officers and employees (including attorneys) as are necessary in the execution of the Commission's functions.

(3) In addition to the number of positions authorized by section 5108(a) of title 5, the Chairman, subject to the approval of the Commission, and subject to the standards and procedures prescribed by chapter 51 of title 5, may place a total of twelve positions in grades GS–16, GS–17, and GS–18.

(4) The appointment of any officer (other than a Commissioner) or employee of the Commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.

(5) The Chairman may provide to officers and employees of the Commission who are appointed or assigned by the Commission to serve abroad (as defined in section 102 of the Foreign Service Act of 1980 (22 U.S.C. 3902)) travel benefits similar to those authorized for members of the Foreign Service of the United Service under chapter 9[1] of such Act (22 U.S.C. 4081 et seq.).

[1] See References in Text note below.

(h) Omitted

(i) Civil action against United States

Subsections (a) and (h) of section 2680 of title 28 do not prohibit the bringing of a civil action on a claim against the United States which—

(1) is based upon—

(A) misrepresentation or deceit on the part of the Commission or any employee thereof, or

(B) any exercise or performance, or failure to exercise or perform, a discretionary function on the part of the Commission or any employee thereof, which exercise, performance, or failure was grossly negligent; and

(2) is not made with respect to any agency action (as defined in section 551(13) of title 5).

In the case of a civil action on a claim based upon the exercise or performance of, or failure to exercise or perform, a discretionary function, no judgment may be entered against the United States unless the court in which such action was brought determines (based upon consideration of all the relevant circumstances, including the statutory responsibility of the Commission and the public interest in encouraging rather than inhibiting the exercise of discretion) that such exercise, performance, or failure to exercise or perform was unreasonable.

(j) Agenda and priorities; establishment and comments

At least 30 days before the beginning of each fiscal year, the Commission shall establish an agenda for Commission action under the Acts under its jurisdiction and, to the extent feasible, shall establish priorities for such actions. Before establishing such agenda and priorities, the Commission shall conduct a public hearing on the agenda and priorities and shall provide reasonable opportunity for the submission of comments.

(Pub. L. 92–573, § 4, Oct. 27, 1972, 86 Stat. 1210; Pub. L. 94–284, §§ 4, 5(a), May 11, 1976, 90 Stat. 504; Pub. L. 95–631, § 2, Nov. 10, 1978, 92 Stat. 3742; Pub. L. 96–373, Oct. 3, 1980, 94 Stat. 1366; Pub. L. 101–608, title I, §§ 102–105(a), Nov. 16, 1990, 104 Stat. 3110, 3111; Pub. L. 112–74, div. C, title V, § 501, Dec. 23, 2011, 125 Stat. 907.)

REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in subsec. (g)(5), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071. Chapter 9 of the Act probably means chapter 9 of title I of the Act which is classified generally to subchapter IX (§ 4081 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

CODIFICATION

Subsec. (h) of this section amended sections 5314 and 5315 of Title 5, Government Organization and Employees.

AMENDMENTS

2011—Subsec. (g)(5). Pub. L. 112–74 added par. (5).

1990—Subsec. (a). Pub. L. 101–608, § 102, inserted after first sentence ''In making such appointments, the President shall consider individuals who, by reason of their background and expertise in areas related to consumer products and protection of the public from risks

to safety, are qualified to serve as members of the Commission.''

Subsec. (d). Pub. L. 101–608, §103, inserted before period at end of first sentence '', except that if there are only three members serving on the Commission because of vacancies in the Commission, two members of the Commission shall constitute a quorum for the transaction of business, and if there are only two members serving on the Commission because of vacancies in the Commission, two members shall constitute a quorum for the six month period beginning on the date of the vacancy which caused the number of Commission members to decline to two''.

Subsec. (g)(1). Pub. L. 101–608, §104, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Chairman, subject to the approval of the Commission, shall appoint an Executive Director, a General Counsel, a Director of Engineering Sciences, a Director of Epidemiology, and a Director of Information. No individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.''

Subsec. (j). Pub. L. 101–608, §105(a), added subsec. (j).

1980—Subsec. (g)(2). Pub. L. 96–373 struck out prohibition against regular personnel acceptance of employment or compensation from manufacturer subject to this chapter for period of twelve months following termination of employment with Commission when compensated within preceding period of twelve months at rate in excess of annual rate of basic pay in effect for grade GS–14 of the General Schedule.

1978—Subsec. (a). Pub. L. 95–631, §2(a), substituted ''Senate. The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, from among the members of the Commission. An individual may be appointed as a member of the Commission and as Chairman at the same time.'' for ''Senate, one of whom shall be designated by the President as Chairman. The Chairman, when so designated shall act as Chairman until the expiration of his term of office as Commissioner.''

Subsec. (i)(1)(A), (B). Pub. L. 95–631, §2(b), struck out ''before January 1, 1978,'' after ''deceit'' in cl. (A) and ''before January 1, 1978'' after ''employee thereof'' in cl. (B).

1976—Subsec. (f)(3). Pub. L. 94–284, §4(a), added par. (3).

Subsec. (g). Pub. L. 94–284, §4(b), substituted ''regular'' for ''full-time'' before ''officer or employee of the Commission'' and added pars. (3) and (4).

Subsec (i). Pub. L. 94–284, §5, added subsec. (i).

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–608, title I, §105(b), Nov. 16, 1990, 104 Stat. 3111, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to fiscal years which begin more than 180 days after the date of the enactment of this Act [Nov. 16, 1990].''

EFFECTIVE DATE

Section effective Oct. 27, 1972, see section 34(1) of Pub. L. 92–573, set out as a note under section 2051 of this title.

INTERIM QUORUM

Pub. L. 110–314, title II, §202(a), Aug. 14, 2008, 122 Stat. 3039, provided that: ''Notwithstanding section 4(d) of the Consumer Product Safety Act (15 U.S.C. 2053(d)), 2 members of the [Consumer Product Safety] Commission, if they are not affiliated with the same political party, shall constitute a quorum for the transaction of business for the 1 year period beginning on the date of enactment of this Act [Aug. 14, 2008].''

UPGRADE OF COMMISSION INFORMATION TECHNOLOGY SYSTEMS

Pub. L. 110–314, title II, §212(b), Aug. 14, 2008, 122 Stat. 3052, provided that: ''The [Consumer Product Safety] Commission shall expedite efforts to upgrade and improve the information technology systems in use by the Commission on the date of enactment of this Act [Aug. 14, 2008].''

REDUCTION IN NUMBER OF COMMISSIONERS

Pub. L. 102–389, title III, Oct. 6, 1992, 106 Stat. 1596, provided in part that funds would not be available for the personnel compensation and benefits of more than three Commissioners of the Consumer Product Safety Commission for fiscal year 1993 and thereafter, prior to repeal by Pub. L. 110–314, title II, §202(b)(1), Aug. 14, 2008, 122 Stat. 3040.

[Pub. L. 110–314, title II, §202(b)(2), Aug. 14, 2008, 122 Stat. 3040, provided that: ''The amendment made by paragraph (1) [repealing provisions of title III of Pub. L. 102–389, formerly set out above] shall take effect 1 year after the date of enactment of this Act [Aug. 14, 2008].'']

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 2053a. Employee training exchanges

(a) In general

The Commission may—

(1) retain or employ officers or employees of foreign government agencies on a temporary basis pursuant to section 2053 of this title or section 3101 or 3109 of title 5; and

(2) detail officers or employees of the Commission to work on a temporary basis for appropriate foreign government agencies for the purpose of providing or receiving training.

(b) Reciprocity and reimbursement

The Commission may execute the authority contained in subsection (a) with or without reimbursement in money or in kind, and with or without reciprocal arrangements by or on behalf of the foreign government agency involved. Any amounts received as reimbursement for expenses incurred by the Commission under this section shall be credited to the appropriations account from which such expenses were paid.

(c) Standards of conduct

An individual retained or employed under subsection (a)(1) shall be considered to be a Federal employee while so retained or employed, only for purposes of—

(1) injury compensation as provided in chapter 81 of title 5 and tort claims liability under chapter 171 of title 28;

(2) the Ethics in Government Act (5 U.S.C. App.) and the provisions of chapter 11 of title 18; and

(3) any other statute or regulation governing the conduct of Federal employees.

(Pub. L. 110–314, title II, §208, Aug. 14, 2008, 122 Stat. 3046.)

REFERENCES IN TEXT

The Ethics in Government Act, referred to in subsec. (c)(2), probably means the Ethics in Government Act of 1978, Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in

the Appendix to Title 5, Government Organization and Employees, and Tables.

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Consumer Product Safety Act which comprises this chapter.

DEFINITION

For definition of ''Commission'' used in this section, see section 2(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

§ 2054. Product safety information and research

(a) Injury Information Clearinghouse; duties

The Commission shall—

(1) maintain an Injury Information Clearinghouse to collect, investigate, analyze, and disseminate injury data, and information, relating to the causes and prevention of death, injury, and illness associated with consumer products;

(2) conduct such continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products as it deems necessary;

(3) following publication of a notice of proposed rulemaking for a product safety rule under any rulemaking authority administered by the Commission, assist public and private organizations or groups of manufacturers, administratively and technically, in the development of safety standards addressing the risk of injury identified in such notice; and

(4) to the extent practicable and appropriate (taking into account the resources and priorities of the Commission), assist public and private organizations or groups of manufacturers, administratively and technically, in the development of product safety standards and test methods.

(b) Research, investigation and testing of consumer products

The Commission may—

(1) conduct research, studies, and investigations on the safety of consumer products and on improving the safety of such products;

(2) test consumer products and develop product safety test methods and testing devices; and

(3) offer training in product safety investigation and test methods.

(c) Grants and contracts for conduct of functions

In carrying out its functions under this section, the Commission may make grants or enter into contracts for the conduct of such functions with any person (including a governmental entity).

(d) Availability to public of information

Whenever the Federal contribution for any information, research, or development activity authorized by this chapter is more than minimal, the Commission shall include in any contract, grant, or other arrangement for such activity, provisions effective to insure that the rights to all information, uses, processes, patents, and other developments resulting from that activity will be made available to the public without charge on a nonexclusive basis. Nothing in this subsection shall be construed to deprive any person of any right which he may have had, prior to entering into any arrangement referred to in this subsection, to any patent, patent application, or invention.

(Pub. L. 92–573, § 5, Oct. 27, 1972, 86 Stat. 1211; Pub. L. 97–35, title XII, § 1209(a), (b), Aug. 13, 1981, 95 Stat. 720; Pub. L. 110–314, title II, § 204(a)(2), Aug. 14, 2008, 122 Stat. 3041.)

AMENDMENTS

2008—Subsec. (a)(3). Pub. L. 110–314 struck out ''an advance notice of proposed rulemaking or'' after ''following publication of''.

1981—Subsec. (a)(3), (4). Pub. L. 97–35, § 1209(a), added pars. (3) and (4).

Subsec. (b)(3). Pub. L. 97–35, § 1209(b), struck out provision that the Commission may assist public and private organizations, administratively and technically, in the development of safety standards and test methods.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35, effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

STUDY OF AVERSIVE AGENTS

Pub. L. 101–608, title II, § 204, Nov. 16, 1990, 104 Stat. 3124, provided that: ''The Consumer Product Safety Commission shall conduct a study of requiring manufacturers of consumer products to include aversive agents, as appropriate, in products which present a hazard if ingested to determine the potential effectiveness of the aversive agents in deterring ingestion. In conducting the study, the Commission shall consult with appropriate consumer, health, and business organizations and appropriate government agencies. The Commission shall report to Congress the status of the study within one year of the date of the enactment of this Act [Nov. 16, 1990] and shall complete the study not later than 2 years after such date of enactment.''

FIRE SAFE CIGARETTE ACT OF 1990

Pub. L. 101–352, Aug. 10, 1990, 104 Stat. 405, provided that:

''SECTION 1. SHORT TITLE; FINDINGS.

''(a) SHORT TITLE.—This Act may be cited as the 'Fire Safe Cigarette Act of 1990'.

''(b) FINDINGS.—The Congress finds that—

''(1) cigarette-ignited fires are the leading cause of fire deaths in the United States,

''(2) in 1987, there were 1,492 deaths from cigarette-ignited fires, 3,809 serious injuries, and $395,000,000 in property damage caused by such fires,

''(3) the final report of the Technical Study Group on Cigarette and Little Cigar Fire Safety under the Cigarette Safety Act of 1984 [set out below] determined that (A) it is technically feasible and may be commercially feasible to develop a cigarette that will have a significantly reduced propensity to ignite furniture and mattresses, and (B) the overall impact on other aspects of the United States society and economy may be minimal,

''(4) the final report of the Technical Study Group on Cigarette and Little Cigar Fire Safety under the Cigarette Safety Act of 1984 further determined that the value of a cigarette with less of a likelihood to ignite furniture and mattresses which would prevent property damage and personal injury and loss of life is economically incalculable,

''(5) it is appropriate for the Congress to require by law the completion of the research described in the final report of the Technical Study Group on Ciga-

rette and Little Cigar Fire Safety and an assessment of the practicability of developing a performance standard to reduce cigarette ignition propensity, and

''(6) it is appropriate for the Consumer Product Safety Commission to utilize its expertise to complete the recommendations for further work and report to Congress in a timely fashion.

''SEC. 2. COMPLETION OF FIRE SAFETY RESEARCH.

''(a) CENTER FOR FIRE RESEARCH.—At the request of the Consumer Product Safety Commission, the National Institute for Standards and Technology's Center for Fire Research shall—

''(1) develop a standard test method to determine cigarette ignition propensity,

''(2) compile performance data for cigarettes using the standard test method developed under paragraph (1), and

''(3) conduct laboratory studies on and computer modeling of ignition physics to develop valid, user-friendly predictive capability.

The Commission shall make such request not later than the expiration of 30 days after the date of the enactment of this Act [Aug. 10, 1990].

''(b) COMMISSION.—The Consumer Product Safety Commission shall—

''(1) design and implement a study to collect baseline and followup data about the characteristics of cigarettes, products ignited, and smokers involved in fires, and

''(2) develop information on societal costs of cigarette-ignited fires.

''(c) HEALTH AND HUMAN SERVICES.—The Consumer Product Safety Commission, in consultation with the Secretary of Health and Human Services, shall develop information on changes in the toxicity of smoke and resultant health effects from cigarette prototypes. The Commission shall not obligate more than $50,000 to develop such information.

''SEC. 3. ADVISORY GROUP.

''(a) ESTABLISHMENT.—There is established the Technical Advisory Group to advise and work with the Consumer Product Safety Commission and National Institute for Standards and Technology's Center for Fire Research on the implementation of this Act. The Technical Advisory Group may hold hearings to develop information to carry out its functions. The Technical Advisory Group shall terminate 1 month after the submission of the final report of the Chairman of the Consumer Product Safety Commission under section 4.

''(b) MEMBERS.—The Technical Advisory Group shall consist of the same individuals appointed to the Technical Study Group on Cigarette and Little Cigar Fire Safety under section 3(a) of the Cigarette Safety Act of 1984 [set out below]. If such an individual is unavailable to serve on the Technical Advisory Group, the entity which such individual represented on such Technical Study Group shall submit to the Chairman of the Consumer Product Safety Commission the name of another individual to be appointed by the Chairman to represent such group on the Technical Advisory Group.

''SEC. 4. REPORTS.

''The Chairman of the Consumer Product Safety Commission, in consultation with the Technical Advisory Group, shall submit to Congress three reports on the activities undertaken under section 2 as follows: The first such report shall be made not later than 13 months after the date of the enactment of this Act [Aug. 10, 1990], the second such report shall be made not later than 25 months after such date, and the final such report shall be made not later than 36 months after such date.

''SEC. 5. CONFIDENTIALITY.

''(a) IN GENERAL.—Any information provided to the National Institute for Standards and Technology's Center for Fire Research, to the Consumer Product Safety Commission, or to the Technical Advisory Group under section 2 which is designated as trade secret or confidential information shall be treated as trade secret or confidential information subject to section 552(b)(4) of title 5, United States Code, and section 1905 of title 18, United States Code, and shall not be revealed, except as provided under subsection (b). No member or employee of the Center for Fire Research, the Consumer Product Safety Commission, or the Technical Advisory Group and no person assigned to or consulting with the Center for Fire Research, the Consumer Product Safety Commission, or the Technical Advisory Group, shall disclose any such information to any person who is not a member or employee of, assigned to, or consulting with, the Center for Fire Research, Consumer Product Safety Commission, or the Technical Advisory Group unless the person submitting such information specifically and in writing authorizes such disclosure.

''(b) CONSTRUCTION.—Subsection (a) does not authorize the withholding of any information from any duly authorized subcommittee or committee of the Congress, except that if a subcommittee or committee of the Congress requests the Consumer Product Safety Commission, the National Institute for Standards and Technology's Center for Fire Research, or the Technical Advisory Group to provide such information, the Commission, the Center for Fire Research, or Technical Advisory Group shall notify the person who provided the information of such a request in writing.''

ADDITIONAL REPORTING TIME

Pub. L. 99–500, § 110, Oct. 18, 1986, 100 Stat. 1783–348, and Pub. L. 99–591, § 110, Oct. 30, 1986, 100 Stat. 3341–348, provided that: ''The Interagency Committee on Cigarette and Little Cigar Fire Safety, established pursuant to Public Law 98–567 [set out as a note below], shall have an additional six months to complete its final technical report and submit policy recommendations to the Congress.''

CIGARETTE SAFETY ACT OF 1984

Pub. L. 98–567, Oct. 30, 1984, 98 Stat. 2925, as amended by Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433, provided: ''That this Act may be cited as the 'Cigarette Safety Act of 1984'.

''SEC. 2. (a) There is established the Interagency Committee on Cigarette and Little Cigar Fire Safety (hereinafter in this Act referred to as the 'Interagency Committee') which shall consist of—

''(1) the Chairman of the Consumer Product Safety Commission, who shall be the Chairman of the Interagency Committee;

''(2) the United States Fire Administrator in the Federal Emergency Management Agency, who shall be the Vice Chairman of the Interagency Committee; and

''(3) the Assistant Secretary of Health in the Department of Health and Human Services.

''(b) The Interagency Committee shall direct, oversee, and review the work of the Technical Study Group on Cigarette and Little Cigar Fire Safety (established under section 3) conducted under section 4 and shall make such policy recommendations to the Congress as it deems appropriate. The Interagency Committee may retain and contract with such consultants as it deems necessary to assist the Study Group in carrying out its functions under section 4. The Interagency Committee may request the head of any Federal department or agency to detail any of the personnel of the department or agency to assist the Interagency Committee or the Study Group in carrying out its responsibilities. The authority of the Interagency Committee to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

''(c) For the purpose of carrying out section 4, the Interagency Committee or the Study Group, with the advice and consent of the Interagency Committee, may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Interagency Committee or the Study Group considers appropriate.

''SEC. 3. (a) There is established the Technical Study Group on Cigarette and Little Cigar Fire Safety (hereinafter in this Act referred to as the 'Study Group') which shall consist of—

''(1) one scientific or technical representative each from the Consumer Product Safety Commission, the Center for Fire Research of the National Institute of Standards and Technology, the National Cancer Institute, the Federal Trade Commission, and the Federal Emergency Management Agency, the appointment of whom shall be made by the heads of those agencies;

''(2) four scientific or technical representatives appointed by the Chairman of the Interagency Committee, by and with the advice and consent of the Interagency Committee, from a list of individuals submitted by the Tobacco Institute;

''(3) two scientific or technical representatives appointed by the Chairman of the Interagency Committee, by and with the advice and consent of the Interagency Committee, who are selected from lists of individuals submitted by the following organizations: the American Burn Association, the American Public Health Association, and the American Medical Association;

''(4) two scientific or technical representatives appointed by the Chairman of the Interagency Committee, by and with the advice and consent of the Interagency Committee, who are selected from lists of individuals submitted by the following organizations: the National Fire Protection Association, the International Association of Fire Chiefs, the International Association of Fire Fighters, the International Society of Fire Service Instructors, and the National Volunteer Fire Council; and

''(5) one scientific or technical representative appointed by the Chairman of the Interagency Committee, by and with the advice and consent of the Interagency Committee, from lists of individuals submitted by the Business and Institutional Furniture Manufacturers Association and one scientific or technical representative appointed by the Chairman, by and with the advice and consent of the Interagency Committee, from lists of individuals submitted by the American Furniture Manufacturers Association.

''(b) The persons appointed to serve on the Study Group may designate, with the advice and consent of the Interagency Committee, from among their number such persons to serve as team leaders, coordinators, or chairpersons as they deem necessary or appropriate to carry out the Study Group's functions under section 4.

''SEC. 4. The Study Group shall undertake, subject to oversight and review by the Interagency Committee, such studies and other activities as it considers necessary and appropriate to determine the technical and commercial feasibility, economic impact, and other consequences of developing cigarettes and little cigars that will have a minimum propensity to ignite upholstered furniture or mattresses. Such activities include identification of the different physical characteristics of cigarettes and little cigars which have an impact on the ignition of upholstered furniture and mattresses, an analysis of the feasibility of altering any pertinent characteristics to reduce ignition propensity, and an analysis of the possible costs and benefits, both to the industry and the public, associated with any such product modification.

''SEC. 5. The Interagency Committee shall submit one year after the date of enactment of this Act [Oct. 30, 1984] a status report to the Senate and the House of Representatives describing the activities undertaken under section 4 during the preceding year. The Interagency Committee shall submit a final technical report, prepared by the Study Group, to the Senate and the House of Representatives not later than thirty months after the date of enactment of this Act [Oct. 30, 1984]. The Interagency Committee shall provide to the Congress, within sixty days after the submission of the final technical report, any policy recommendations the Interagency Committee deems appropriate. The Interagency Committee and the Study Group shall terminate one month after submission of the policy recommendations prescribed by this section.

''SEC. 6. (a) Any information provided to the Interagency Committee or to the Study Group under section 4 which is designated as trade secret or confidential information shall be treated as trade secret or confidential information subject to section 552(b)(4) of title 5, United States Code, and section 1905 of title 18, United States Code, and shall not be revealed, except as provided under subsection (b). No member of the Study Group or Interagency Committee, and no person assigned to or consulting with the Study Group, shall disclose any such information to any person who is not a member of, assigned to, or consulting with, the Study Group or Interagency Committee unless the person submitting such information specifically and in writing authorizes such disclosure.

''(b) Subsection (a) does not authorize the withholding of any information from any duly authorized subcommittee or committee of the Congress, except that if a subcommittee or committee of the Congress requests the Interagency Committee to provide such information, the Chairman of the Interagency Committee shall notify the person who provided the information of such a request in writing.

''(c) The Interagency Committee shall, on the vote of a majority of its members, adopt reasonable procedures to protect the confidentiality of trade secret and confidential information, as defined in this section.

''SEC. 7. As used in this Act, the terms 'cigarettes' and 'little cigars' have the meanings given such terms by section 3 of the Federal Cigarette Labeling and Advertising Act [15 U.S.C. 1332].''

§ 2055. Public disclosure of information

(a) Disclosure requirements for manufacturers or private labelers; procedures applicable

(1) Nothing contained in this Act shall be construed to require the release of any information described by subsection (b) of section 552 of title 5 or which is otherwise protected by law from disclosure to the public.

(2) All information reported to or otherwise obtained by the Commission or its representative under this Act which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 or subject to section 552(b)(4) of title 5 shall be considered confidential and shall not be disclosed.

(3) The Commission shall, prior to the disclosure of any information which will permit the public to ascertain readily the identity of a manufacturer or private labeler of a consumer product, offer such manufacturer or private labeler an opportunity to mark such information as confidential and therefore barred from disclosure under paragraph (2). A manufacturer or private labeler shall submit any such mark within 15 calendar days after the date on which it receives the Commission's offer.

(4) All information that a manufacturer or private labeler has marked to be confidential and barred from disclosure under paragraph (2), either at the time of submission or pursuant to paragraph (3), shall not be disclosed, except in accordance with the procedures established in paragraphs (5) and (6).

(5) If the Commission determines that a document marked as confidential by a manufacturer or private labeler to be barred from disclosure under paragraph (2) may be disclosed because it is not confidential information as provided in paragraph (2), the Commission shall notify such

person in writing that the Commission intends to disclose such document at a date not less than 10 days after the date of receipt of notification.

(6) Any person receiving such notification may, if he believes such disclosure is barred by paragraph (2), before the date set for release of the document, bring an action in the district court of the United States in the district in which the complainant resides, or has his principal place or business, or in which the documents are located, or in the United States District Court for the District of Columbia to restrain disclosure of the document. Any person receiving such notification may file with the appropriate district court or court of appeals of the United States, as appropriate, an application for a stay of disclosure. The documents shall not be disclosed until the court has ruled on the application for a stay.

(7) Nothing in this Act shall authorize the withholding of information by the Commission or any officer or employee under its control from the duly authorized committees or subcommittees of the Congress, and the provisions of paragraphs (2) through (6) shall not apply to such disclosures, except that the Commission shall immediately notify the manufacturer or private labeler of any such request for information designated as confidential by the manufacturer or private labeler.

(8) The provisions of paragraphs (2) through (6) shall not prohibit the disclosure of information to other officers, employees, or representatives of the Commission (including contractors) concerned with carrying out this Act or when relevant in any administrative proceeding under this Act or in judicial proceedings to which the Commission is a party. Any disclosure of relevant information—

(A) in Commission administrative proceedings or in judicial proceedings to which the Commission is a party, or

(B) to representatives of the Commission (including contractors),

shall be governed by the rules of the Commission (including in camera review rules for confidential material) for such proceedings or for disclosures to such representatives or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section.

(b) Additional disclosure requirements for manufacturers or private labelers; procedures applicable

(1) Except as provided by paragraph (4) of this subsection, not less than 15 days prior to its public disclosure of any information obtained under this Act, or to be disclosed to the public in connection therewith (unless the Commission publishes a finding that the public health and safety requires a lesser period of notice), the Commission shall, to the extent practicable, notify and provide a summary of the information to, each manufacturer or private labeler of any consumer product to which such information pertains, if the manner in which such consumer product is to be designated or described in such information will permit the public to ascertain readily the identity of such manufacturer or private labeler, and shall provide such manufacturer or private labeler with a reasonable opportunity to submit comments to the Commission in regard to such information. The Commission shall take reasonable steps to assure, prior to its public disclosure thereof, that information from which the identity of such manufacturer or private labeler may be readily ascertained is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this Act. In disclosing any information under this subsection, the Commission may, and upon the request of the manufacturer or private labeler shall, include with the disclosure any comments or other information or a summary thereof submitted by such manufacturer or private labeler to the extent permitted by and subject to the requirements of this section.

(2) If the Commission determines that a document claimed to be inaccurate by a manufacturer or private labeler under paragraph (1) should be disclosed because the Commission believes it has complied with paragraph (1), the Commission shall notify the manufacturer or private labeler that the Commission intends to disclose such document at a date not less than 5 days after the date of the receipt of notification. The Commission may provide a lesser period of notice of intent to disclose if the Commission publishes a finding that the public health and safety requires a lesser period of notice.

(3)(A) Prior to the date set for release of the document, the manufacturer or private labeler receiving the notice described in paragraph (2) may bring an action in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the documents are located or in the United States District Court for the District of Columbia to enjoin disclosure of the document. The district court may enjoin such disclosure if the Commission has failed to take the reasonable steps prescribed in paragraph (1).

(B) If the Commission determines that the public health and safety requires expedited consideration of an action brought under subparagraph (A), the Commission may file a request with the District Court for such expedited consideration. If the Commission files such a request, the District Court shall—

(i) assign the matter for hearing at the earliest possible date;

(ii) give precedence to the matter, to the greatest extent practicable, over all other matters pending on the docket of the court at the time;

(iii) expedite consideration of the matter to the greatest extent practicable; and

(iv) grant or deny the requested injunction within 30 days after the date on which the Commission's request was filed with the court.

(4) Paragraphs (1) through (3) of this subsection shall not apply to the public disclosure of (A) information about any consumer product with respect to which product the Commission has filed an action under section 2061 of this title (relating to imminently hazardous products), or which the Commission has reasonable cause to believe is in violation of any consumer

product safety rule or provision of this Act or similar rule or provision of any other Act enforced by the Commission; or (B) information in the course of or concerning a rulemaking proceeding (which shall commence upon the publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking), an adjudicatory proceeding (which shall commence upon the issuance of a complaint) or other administrative or judicial proceeding under this Act.

(5) In addition to the requirements of paragraph (1), the Commission shall not disclose to the public information submitted pursuant to section 2064(b) of this title respecting a consumer product unless—

(A) the Commission has issued a complaint under section 2064(c) or (d) of this title alleging that such product presents a substantial product hazard;

(B) in lieu of proceeding against such product under section 2064(c) or (d) of this title, the Commission has accepted in writing a remedial settlement agreement dealing with such product;

(C) the person who submitted the information under section 2064(b) of this title agrees to its public disclosure; or

(D) the Commission publishes a finding that the public health and safety requires public disclosure with a lesser period of notice than is required under paragraph (1).

The provisions of this paragraph shall not apply to the public disclosure of information with respect to a consumer product which is the subject of an action brought under section 2061 of this title, or which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision under this Act or similar rule or provision of any other Act enforced by the Commission, or information in the course of or concerning a judicial proceeding.

(6) Where the Commission initiates the public disclosure of information that reflects on the safety of a consumer product or class of consumer products, whether or not such information would enable the public to ascertain readily the identity of a manufacturer or private labeler, the Commission shall establish procedures designed to ensure that such information is accurate and not misleading.

(7) If the Commission finds that, in the administration of this Act, it has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product or class of consumer products, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner equivalent to that in which such disclosure was made, take reasonable steps to publish a retraction of such inaccurate or misleading information.

(8) If, after the commencement of a rulemaking or the initiation of an adjudicatory proceeding, the Commission decides to terminate the proceeding before taking final action, the Commission shall, in a manner equivalent to that in which such commencement or initiation was publicized, take reasonable steps to make known the decision to terminate.

(c) Communications with manufacturers

The Commission shall communicate to each manufacturer of a consumer product, insofar as may be practicable, information as to any significant risk of injury associated with such product.

(d) "Act" defined; coverage

(1) For purposes of this section, the term ''Act'' means the Consumer Product Safety Act [15 U.S.C. 2051 et seq.], the Flammable Fabrics Act [15 U.S.C. 1191 et seq.], the Poison Prevention Packaging Act [15 U.S.C. 1471 et seq.], and the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.].

(2) The provisions of this section shall apply whenever information is to be disclosed by the Commission, any member of the Commission, or any employee, agent, or representative of the Commission in an official capacity.

(e) Disclosure of information regarding civil actions involving consumer product alleged to have caused death or injury

(1) Notwithstanding the provisions of section 552 of title 5, subsection (a)(7) of this section, or of any other law, except as provided in paragraphs (2), (3), and (4), no member of the Commission, no officer or employee of the Commission, and no officer or employee of the Department of Justice may—

(A) publicly disclose information furnished under subsection (c)(1) or (c)(2)(A) of section 2084 of this title;

(B) use such information for any purpose other than to carry out the Commission's responsibilities; or

(C) permit anyone (other than the members, officers, and employees of the Commission or officers or employees of the Department of Justice who require such information for an action filed on behalf of the Commission) to examine such information.

(2) Any report furnished under subsection (c)(1) or (c)(2)(A) of section 2084 of this title shall be immune from legal process and shall not be subject to subpoena or other discovery in any civil action in a State or Federal court or in any administrative proceeding, except in an action against such manufacturer under section 2069, 2070, or 2071 of this title for failure to furnish information required by section 2084 of this title.

(3) The Commission may, upon written request, furnish to any manufacturer or to the authorized agent of such manufacturer authenticated copies of reports furnished by or on behalf of such manufacturer in accordance with section 2084 of this title, upon payment of the actual or estimated cost of searching the records and furnishing such copies.

(4) Upon written request of the Chairman or Ranking Minority Member of either of the appropriate Congressional committees or any subcommittee thereof, the Commission shall provide to the Chairman or Ranking Minority Member any information furnished to the Commission under section 2084 of this title for purposes that are related to the jurisdiction of such committee or subcommittee.

(5) Any officer or employee of the Commission or other officer or employee of the Federal Gov-

ernment who receives information provided under section 2084 of this title, who willfully violates the requirements of this subsection shall be subject to dismissal or other appropriate disciplinary action consistent with procedures and requirements established by the Office of Personnel Management.

(Pub. L. 92–573, §6, Oct. 27, 1972, 86 Stat. 1212; Pub. L. 97–35, title XII, §1204, Aug. 13, 1981, 95 Stat. 713; Pub. L. 97–414, §9(j)(1), Jan. 4, 1983, 96 Stat. 2064; Pub. L. 101–608, title I, §§106, 112(c), Nov. 16, 1990, 104 Stat. 3111, 3116; Pub. L. 110–314, title II, §§211, 235(c)(2), Aug. 14, 2008, 122 Stat. 3047, 3074.)

REFERENCES IN TEXT

The Consumer Product Safety Act, referred to in subsec. (d)(1), is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

The Flammable Fabrics Act, referred to in subsec. (d)(1), is act June 30, 1953, ch. 164, 67 Stat. 111, as amended, which is classified generally to chapter 25 (§1191 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1191 of this title and Tables.

The Poison Prevention Packaging Act, referred to in subsec. (d)(1), probably means the Poison Prevention Packaging Act of 1970, Pub. L. 91–601, Dec. 30, 1970, 84 Stat. 1670, which is classified principally to chapter 39A (§1471 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of this title and Tables.

The Federal Hazardous Substances Act, referred to in subsec. (d)(1), is Pub. L. 86–613, July 12, 1960, 74 Stat. 372, as amended, which is classified generally to chapter 30 (§1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

AMENDMENTS

2008—Subsec. (a)(3). Pub. L. 110–314, §211(1), inserted ''A manufacturer or private labeler shall submit any such mark within 15 calendar days after the date on which it receives the Commission's offer.'' after ''paragraph (2).''

Subsec. (b)(1). Pub. L. 110–314, §211(2)–(4), substituted ''15 days'' for ''30 days'', ''publishes a finding that the public'' for ''finds that the public'', and ''notice),'' for ''notice and publishes such a finding in the Federal Register),''.

Subsec. (b)(2). Pub. L. 110–314, §211(5)–(7), substituted ''5 days'' for ''10 days'', ''publishes a finding that the public'' for ''finds that the public'', and ''notice.'' for ''notice and publishes such finding in the Federal Register.''

Subsec. (b)(3). Pub. L. 110–314, §211(8), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(4). Pub. L. 110–314, §211(9), which directed substitution of ''any consumer product safety rule or provision of this Act or similar rule or provision of any other Act enforced by the Commission;'' for ''section 2068 of this title (related to prohibited acts);'', was executed by making the substitution for ''section 2068 of this title (relating to prohibited acts);'' to reflect the probable intent of Congress.

Subsec. (b)(5). Pub. L. 110–314, §211(10)–(13), added subpar. (D) and substituted ''any consumer product safety rule or provision under this Act or similar rule or provision of any other Act enforced by the Commission,'' for ''section 2068(a) of this title,'' in concluding provisions.

Subsec. (e)(4). Pub. L. 110–314, §235(c)(2), substituted ''either of the appropriate Congressional committees or any subcommittee thereof,'' for ''the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Representatives or any subcommittee of such committee,''.

1990—Subsec. (a)(8). Pub. L. 101–608, §106, amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''The provisions of paragraphs (2) through (6) shall not prohibit the disclosure of information to other officers or employees concerned with carrying out this Act or when relevant in any administrative proceeding under this Act, or in judicial proceedings to which the Commission is a party. Any disclosure of relevant information in Commission administrative proceedings, or in judicial proceedings to which the Commission is a party, shall be governed by the rules of the Commission (including in camera review rules for confidential material) for such proceedings or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section.''

Subsec. (e). Pub. L. 101–608, §112(c), added subsec. (e).

1983—Subsec. (b)(1). Pub. L. 97–414 substituted ''paragraph (4)'' for ''paragraph (2)''.

1981—Subsec. (a)(1). Pub. L. 97–35 amended par. (1) generally, substituting ''shall be construed'' for ''shall be deemed''.

Subsec. (a)(2). Pub. L. 97–35 amended par. (2) generally, substituting ''title 18, or subject to section 552(b)(4) of title 5, shall be considered confidential and shall not be disclosed'' for ''title 18 shall be considered confidential and shall not be disclosed, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this chapter shall authorize the withholding of information by the Commission or any officer or employee under its control from the duly authorized committees of the Congress''.

Subsec. (a)(3) to (8). Pub. L. 97–35 added pars. (3) to (8).

Subsec. (b)(1). Pub. L. 97–35 amended par. (1) generally, substituting ''notice and publishes such a finding in the Federal Register),'' for ''notice),'', and ''In disclosing any information under this subsection, the Commission may, and upon the request of the manufacturer or private labeler shall, include with the disclosure any comments or other information or a summary thereof submitted by such manufacturer or private labeler to the extent permitted by and subject to the requirements of this section'' for ''If the Commission finds that, in the administration of this chapter, it has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner similar to that in which such disclosure was made, publish a retraction of such inaccurate or misleading information''.

Subsec. (b)(2) to (4). Pub. L. 97–35 added pars. (2) and (3), redesignated former par. (2) as (4) and substituted ''Paragraphs (1) through (3) of this subsection'' for ''Paragraph (1) (except for the last sentence thereof)'' and ''a rulemaking proceeding (which shall commence upon the publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking), an adjudicatory proceeding (which shall commence upon the issuance of a complaint) or other administrative or judicial proceeding under this chapter'' for ''any administrative or judicial proceeding under this chapter''.

Subsec. (b)(5) to (8). Pub. L. 97–35 added pars. (5) to (8).

Subsecs. (c), (d). Pub. L. 97–35 reenacted subsec. (c) without change and added subsec. (d).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

CONFIDENTIALITY PROTECTIONS FOR INFORMATION REPORTED ON INCIDENTS OF CHILDREN CHOKING

For purposes of subsection (b)(5) of this section, information reported to Consumer Product Safety Commission on incidents of children choking on a marble, small ball, latex balloon, or other small part contained in a toy or game, to be treated as information submitted pursuant to section 2064(b) of this title, see section 102 of Pub. L. 103–267, set out as a Reporting Requirements note under section 2064 of this title.

§ 2055a. Publicly available consumer product safety information database

(a) Database required

(1) In general

Subject to the availability of appropriations, the Commission shall, in accordance with the requirements of this section, establish and maintain a database on the safety of consumer products, and other products or substances regulated by the Commission, that is—

(A) publicly available;

(B) searchable; and

(C) accessible through the Internet website of the Commission.

(2) Submission of detailed implementation plan to Congress

Not later than 180 days after August 14, 2008, the Commission shall transmit to the appropriate Congressional committees a detailed plan for establishing and maintaining the database required by paragraph (1), including plans for the operation, content, maintenance, and functionality of the database. The plan shall detail the integration of the database into the Commission's overall information technology improvement objectives and plans. The plan submitted under this subsection shall include a detailed implementation schedule for the database, and plans for a public awareness campaign to be conducted by the Commission to increase consumer awareness of the database.

(3) Date of initial availability

Not later than 18 months after the date on which the Commission submits the plan required by paragraph (2), the Commission shall establish the database required by paragraph (1).

(b) Content and organization

(1) Contents

Except as provided in subsection (c)(4), the database shall include the following:

(A) Reports of harm relating to the use of consumer products, and other products or substances regulated by the Commission, that are received by the Commission from—

(i) consumers;

(ii) local, State, or Federal government agencies;

(iii) health care professionals;

(iv) child service providers; and

(v) public safety entities.

(B) Information derived by the Commission from notice under section 2064(c) of this title or any notice to the public relating to a voluntary corrective action taken by a manufacturer, in consultation with the Commission, of which action the Commission has notified the public.

(C) The comments received by the Commission under subsection (c)(2)(A) to the extent requested under subsection (c)(2)(B).

(2) Submission of information

In implementing the database, the Commission shall establish the following:

(A) Electronic, telephonic, and paper-based means of submitting, for inclusion in the database, reports described in paragraph (1)(A) of this subsection.

(B) A requirement that any report described in paragraph (1)(A) submitted for inclusion in such database include, at a minimum—

(i) a description of the consumer product (or other product or substance regulated by the Commission) concerned;

(ii) identification of the manufacturer or private labeler of the consumer product (or other product or substance regulated by the Commission);

(iii) a description of the harm relating to the use of the consumer product (or other product or substance regulated by the Commission);

(iv) contact information for the person submitting the report; and

(v) a verification by the person submitting the information that the information submitted is true and accurate to the best of the person's knowledge and that the person consents that such information be included in the database.

(3) Additional information

In addition to the reports received under paragraph (1), the Commission shall include in the database, consistent with the requirements of section 2055(a) and (b) of this title, any additional information it determines to be in the public interest.

(4) Organization of database

The Commission shall categorize the information available on the database in a manner consistent with the public interest and in such manner as it determines to facilitate easy use by consumers and shall ensure, to the extent practicable, that the database is sortable and accessible by—

(A) the date on which information is submitted for inclusion in the database;

(B) the name of the consumer product (or other product or substance regulated by the Commission);

(C) the model name;

(D) the manufacturer's or private labeler's name; and

(E) such other elements as the Commission considers in the public interest.

(5) Notice requirements

The Commission shall provide clear and conspicuous notice to users of the database that the Commission does not guarantee the accuracy, completeness, or adequacy of the contents of the database.

(6) Availability of contact information

The Commission may not disclose, under this section, the name, address, or other con-

tact information of any individual or entity that submits to the Commission a report described in paragraph (1)(A), except that the Commission may provide such information to the manufacturer or private labeler of the product with the express written consent of the person submitting the information. Consumer information provided to a manufacturer or private labeler under this section may not be used or disseminated to any other party for any purpose other than verifying a report submitted under paragraph (1)(A).

(c) Procedural requirements

(1) Transmission of reports to manufacturers and private labelers

Not later than 5 business days after the Commission receives a report described in subsection (b)(1)(A) which includes the information required by subsection (b)(2)(B), the Commission shall to the extent practicable transmit the report, subject to subsection (b)(6), to the manufacturer or private labeler identified in the report.

(2) Opportunity to comment

(A) In general

If the Commission transmits a report under paragraph (1) to a manufacturer or private labeler, the Commission shall provide such manufacturer or private labeler an opportunity to submit comments to the Commission on the information contained in such report.

(B) Request for inclusion in database

A manufacturer or private labeler may request the Commission to include its comments in the database.

(C) Confidential matter

(i) In general

If the Commission transmits a report received under paragraph (1) to a manufacturer or private labeler, the manufacturer or private labeler may review the report for confidential information and request that portions of the report identified as confidential be so designated.

(ii) Redaction

If the Commission determines that the designated information contains, or relates to, a trade secret or other matter referred to in section 1905 of title 18, or that is subject to section 552(b)(4) of title 5, the Commission shall redact the designated information in the report before it is placed in the database.

(iii) Review

If the Commission determines that the designated information is not confidential under clause (ii), the Commission shall notify the manufacturer or private labeler and include the information in the database. The manufacturer or private labeler may bring an action in the district court of the United States in the district in which the complainant resides, or has its principal place of business, or in the United States District Court for the District of Columbia, to seek removal of the information from the database.

(3) Publication of reports and comments

(A) Reports

Except as provided in paragraph (4)(A) or paragraph (5), if the Commission receives a report described in subsection (b)(1)(A), the Commission shall make the report available in the database not later than the 10th business day after the date on which the Commission transmits the report under paragraph (1) of this subsection.

(B) Comments

Except as provided in paragraph (4)(A), if the Commission receives a comment under paragraph (2)(A) with respect to a report described in subsection (b)(1)(A) and a request with respect to such comment under paragraph (2)(B) of this subsection, the Commission shall make such comment available in the database at the same time as such report or as soon as practicable thereafter.

(4) Inaccurate information

(A) Inaccurate information in reports and comments received

If, prior to making a report described in subsection (b)(1)(A) or a comment described in paragraph (2) of this subsection available in the database, the Commission receives notice that the information in such report or comment is materially inaccurate, the Commission shall stay the publication of the report on the database as required under paragraph (3) for a period of no more than 5 additional days. If the Commission determines that the information in such report or comment is materially inaccurate, the Commission shall—

(i) decline to add the materially inaccurate information to the database;

(ii) correct the materially inaccurate information in the report or comment and add the report or comment to the database; or

(iii) add information to correct inaccurate information in the database.

(B) Inaccurate information in database

If the Commission determines, after investigation, that information previously made available in the database is materially inaccurate or duplicative of information in the database, the Commission shall, not later than 7 business days after such determination—

(i) remove such information from the database;

(ii) correct such information; or

(iii) add information to correct inaccurate information in the database.

(5) Obtaining certain product identification information

(A) In general

If the Commission receives a report described in subsection (b)(1)(A) that does not include the model or serial number of the consumer product concerned, the Commission shall seek from the individual or entity

submitting the report such model or serial number or, if such model or serial number is not available, a photograph of the product. If the Commission obtains information relating to the serial or model number of the product or a photograph of the product, it shall immediately forward such information to the manufacturer of the product. The Commission shall make the report available in the database on the 15th business day after the date on which the Commission transmits the report under paragraph (1) and shall include in the database any additional information about the product obtained under this paragraph.

(B) Rule of construction

Nothing in this paragraph shall be construed to—

(i) permit the Commission to delay transmission of the report under paragraph (1) until the Commission has obtained the model or serial number or a photograph of the consumer product concerned; or

(ii) make inclusion in the database of a report described in subsection (b)(1)(A) contingent on the availability of the model or serial number or a photograph of the consumer product concerned.

(d) Annual report

The Commission shall submit to the appropriate Congressional committees an annual report on the database, including—

(1) the operation, content, maintenance, functionality, and cost of the database for the reporting year; and

(2) the number of reports and comments for the year—

(A) received by the Commission under this section;

(B) posted on the database; and

(C) corrected on or removed from the database.

(e) GAO study

Within 2 years after the date on which the Commission establishes the database under this section, the Comptroller General shall submit a report to the appropriate Congressional committees containing—

(1) an analysis of the general utility of the database, including—

(A) an assessment of the extent of use of the database by consumers, including whether the database is accessed by a broad range of the public and whether consumers find the database to be useful; and

(B) efforts by the Commission to inform the public about the database; and

(2) recommendations for measures to increase use of the database by consumers and to ensure use by a broad range of the public.

(f) Application of certain notice and disclosure requirements

(1) In general

The provisions of section 2055(a) and (b) of this title shall not apply to the disclosure under this section of a report described in subsection (b)(1)(A) of this section.

(2) Construction

Paragraph (1) shall not be construed to exempt from the requirements of section 2055(a) and (b) of this title information received by the Commission under—

(A) section 2064(b) of this title; or

(B) any other mandatory or voluntary reporting program established between a retailer, manufacturer, or private labeler and the Commission.

(g) Harm defined

In this section, the term ''harm'' means—

(1) injury, illness, or death; or

(2) risk of injury, illness, or death, as determined by the Commission.

(Pub. L. 92–573, § 6A, as added Pub. L. 110–314, title II, § 212(a), Aug. 14, 2008, 122 Stat. 3048; amended Pub. L. 112–28, § 7, Aug. 12, 2011, 125 Stat. 281.)

AMENDMENTS

2011—Subsec. (c)(3)(A). Pub. L. 112–28, § 7(1), inserted ''or paragraph (5)'' after ''paragraph (4)(A)''.

Subsec. (c)(4)(A). Pub. L. 112–28, § 7(2), substituted ''receives notice that the information in such report or comment is materially inaccurate, the Commission shall stay the publication of the report on the database as required under paragraph (3) for a period of no more than 5 additional days. If the Commission determines that the information in such report or comment is materially inaccurate, the Commission shall—'' for ''determines that the information in such report or comment is materially inaccurate, the Commission shall—'' in introductory provisions.

Subsec. (c)(5). Pub. L. 112–28, § 7(3), added par. (5).

§ 2056. Consumer product safety standards

(a) Types of requirements

The Commission may promulgate consumer product safety standards in accordance with the provisions of section 2058 of this title. A consumer product safety standard shall consist of one or more of any of the following types of requirements:

(1) Requirements expressed in terms of performance requirements.

(2) Requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions.

Any requirement of such a standard shall be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with such product.

(b) Reliance of Commission upon voluntary standards

(1) The Commission shall rely upon voluntary consumer product safety standards rather than promulgate a consumer product safety standard prescribing requirements described in subsection (a) whenever compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and it is likely that there will be substantial compliance with such voluntary standards.

(2) The Commission shall devise procedures to monitor compliance with any voluntary standards—

(A) upon which the Commission has relied under paragraph (1);

(B) which were developed with the participation of the Commission; or

(C) whose development the Commission has monitored.

(c) Contribution of Commission to development cost

If any person participates with the Commission in the development of a consumer product safety standard, the Commission may agree to contribute to the person's cost with respect to such participation, in any case in which the Commission determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution, and that the person is financially responsible. Regulations of the Commission shall set forth the items of cost in which it may participate, and shall exclude any contribution to the acquisition of land or buildings. Payments under agreements entered into under this subsection may be made without regard to section 3324(a) and (b) of title 31.

(Pub. L. 92–573, §7, Oct. 27, 1972, 86 Stat. 1212; Pub. L. 94–284, §§6, 7, 8(a), May 11, 1976, 90 Stat. 505, 506; Pub. L. 95–631, §§3, 4(a)–(c), 5, Nov. 10, 1978, 92 Stat. 3742–3744; Pub. L. 97–35, title XII, §1202, Aug. 13, 1981, 95 Stat. 703; Pub. L. 101–608, title I, §107(a), Nov. 16, 1990, 104 Stat. 3111.)

CODIFICATION

In subsec. (c), ''section 3324(a) and (b) of title 31'' substituted for ''section 3648 of the Revised Statutes of the United States (31 U.S.C. 529)'' on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–608 designated existing provisions as par. (1) and added par. (2).

1981—Subsec. (a). Pub. L. 97–35 amended subsec. (a) generally, and in the requirements for consumer product safety standards, struck out reference to composition, contents, design, construction, finish, or packaging of consumer products, and struck out provision that the requirements of the standards other than requirements relating to labeling, warnings, or instructions, shall, whenever, feasible, be expressed in terms of performance requirements.

Subsec. (b). Pub. L. 97–35 amended subsec. (b) generally, substituting provisions relating to the reliance by the Commission upon voluntary standards for provisions prescribing procedure for development of consumer product safety standards.

Subsec. (c). Pub. L. 97–35 amended subsec. (c) generally, substituting provisions relating to contribution by the Commission to the development cost of consumer safety standards for provisions relating to publication of proposed safety rules developed from existing standards.

Subsec. (d). Pub. L. 97–35 struck out subsec. (d) which related to the acceptance of offers to develop proposed standards and the Commission's contribution to development costs.

Subsec. (e). Pub. L. 97–35 struck out subsec. (e) which related to development of proposed safety rules by the Commission.

Subsec. (f). Pub. L. 97–35 struck out subsec. (f) which provided for termination of rule-making proceedings and a statement relating to the reasons therefor.

1978—Subsec. (b). Pub. L. 95–631, §3, designated existing provision as par. (1), and in par. (1) as so redesignated, redesignated pars. (1) to (4) as subpars. (A) and (D), in subpar. (D) as so redesignated, inserted provision including as a means of commencing a proceeding, a publication in the Federal Register of a statement that the Commission intends to develop the proposed consumer product safety standard, added subpar. (E), struck out provision that the period specified within which the offeror of an accepted offer develops the proposed standard be a period ending 150 days after the date the offer was accepted unless the Commission for good cause found, and included such finding in the notice that a different period was appropriate, and added par. (2).

Subsec. (c). Pub. L. 95–631, §5, amended subsec. (c) generally, inserting provisions relating to subsec. (b)(1)(D) and striking out provisions for publication of a proposed consumer product safety rule, in lieu of acceptance of an offer under subsec. (d), where a standard had been issued or adopted by any Federal agency or by any other qualified agency, organization, or institution and the standard if promulgated under the chapter would eliminate or reduce the unreasonable risk of injury associated with the product.

Subsec. (d)(1). Pub. L. 95–631, §4(a)(1), inserted ''subsection (b)(2) and by'' after ''as provided by'' and substituted references to subsec. (b)(1)(D)(ii)(I) for (b)(4)(B) of this section and subsec. (b)(1)(E) for (b) of this section.

Subsec. (d)(2). Pub. L. 95–631, §4(a)(2)(A)–(C), inserted in first sentence ''or if any person participates with the Commission in the development of a consumer product safety standard under subsection (b)(2)(A) or subsection (e) of this section'' after ''under this subsection'', ''or the person's cost with respect to such participation'' after ''safety standards'' and ''or person'' after ''offeror''.

Subsec. (d)(4). Pub. L. 95–631, §4(a)(3), added par. (4).

Subsec. (e). Pub. L. 95–631, §(4)(b), amended provisions generally, and among other changes, substituted references to subsec. (b)(1)(D)(ii)(I) of this section for prior references to subsec. (b) of this section, and struck out par. (3) defining the development period, now covered in subsec. (b)(1)(E) of this section.

Subsec. (f). Pub. L. 95–631, §4(c), amended provisions generally, and among other changes, reduced the period within which to publish a proposed consumer product safety standard to forty-five days from 150 days and required the publication in the Federal Register of the reasons for not publishing the proposed standard, including a statement indicative of the taking of other approaches such as a voluntary consumer safety standard adopted by persons to be subject to the proposed standard.

1976—Subsec. (a). Pub. L. 94–284, §6, designated existing provision as par. (1), redesignated as subpars. (A) and (B) existing pars. (1) and (2), and added par. (2).

Subsec. (b). Pub. L. 94–284, §7(a), substituted ''date the offer is accepted'' for ''publication of notice'' in provision following par. (4)(B).

Subsec. (d)(2). Pub. L. 94–284, §8(a), inserted provision which permits the Commission to advance public moneys without the need of authorized appropriations as required by section 529 of title 31.

Subsec. (e). Pub. L. 94–284, §7(b), permitted the Commission to develop and publish a proposed consumer safety product rule if the development period as specified in par. (3) ends.

Subsec. (f). Pub. L. 94–284, §7(c), provided that if within 60 days after publication of notice for a proceeding for the development of a consumer product safety standard (or longer if the Commission so prescribe), no offer is submitted or none is acceptable, the Commission terminate the proceeding or develop proposals of its own, which proposals be published as a rule within 150 days after the expiration of the 60 day period or the proceeding then terminated, and that if an offer is accepted within the 60 day period, then within 210 days after acceptance, the Commission must publish the proposal as a rule or terminate the proceeding.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 applicable with respect to regulations under this chapter and chapters 25 and 30

of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

CHILDREN'S GASOLINE BURN PREVENTION

Pub. L. 110–278, July 17, 2008, 122 Stat. 2602, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Children's Gasoline Burn Prevention Act'.

''SEC. 2. CHILD-RESISTANT PORTABLE GASOLINE CONTAINERS.

''(a) CONSUMER PRODUCT SAFETY RULE.—The provision of subsection (b) shall be considered to be a consumer product safety rule issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).

''(b) REQUIREMENTS.—Effective 6 months after the date of enactment of this Act [July 17, 2008], each portable gasoline container manufactured on or after that date for sale in the United States shall conform to the child-resistance requirements for closures on portable gasoline containers specified in the standard ASTM F2517-05, issued by ASTM International.

''(c) DEFINITION.—As used in this Act, the term 'portable gasoline container' means any portable gasoline container intended for use by consumers.

''(d) REVISION OF RULE.—If, after the enactment of this Act, ASTM International proposes to revise the child resistance requirements of ASTM F2517-05, ASTM International shall notify the Consumer Product Safety Commission of the proposed revision and the proposed revision shall be incorporated in the consumer product safety rule under subsection (a) unless, within 60 days of such notice, the Commission notifies ASTM International that the Commission has determined that such revision does not carry out the purposes of subsection (b).

''(e) IMPLEMENTING REGULATIONS.—Section 553 of title 5, United States Code, shall apply with respect to the issuance of any regulations by the Consumer Product Safety Commission to implement the requirements of this section, and sections 7 and 9 of the Consumer Product Safety Act [15 U.S.C. 2056, 2058] shall not apply to such issuance.

''(f) REPORT.—Not later than 2 years after the date of enactment of this Act [July 17, 2008], the Consumer Product Safety Commission shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on—

''(1) the degree of industry compliance with the standard promulgated under subsection (a);

''(2) any enforcement actions brought by the Commission to enforce such standard; and

''(3) incidents involving children interacting with portable gasoline containers (including both those that are and are not in compliance with the standard promulgated under subsection (a)).''

AUTOMATIC GARAGE DOOR OPENERS

Pub. L. 101–608, title II, § 203, Nov. 16, 1990, 104 Stat. 3123, provided that:

''(a) CONSUMER PRODUCT SAFETY RULE.—The provisions of subsection (b) shall be considered to be a consumer product safety rule issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act [15 U.S.C. 2058].

''(b) REQUIREMENTS.—

''(1) Effective on and after January 1, 1991, each automatic residential garage door opener manufactured on or after that date for sale in the United States shall conform to the entrapment protection requirements of the American National Standards Institute Underwriters Laboratories, Inc. Standards for Safety—UL 325, third edition, as revised May 4, 1988.

''(2)(A) Effective on and after January 1, 1993, all residential automatic garage door openers manufactured on and after such date for sale in the United States shall conform to any additional entrapment protection requirements of the American National Standards Institute Underwriters Laboratories, Inc. Standards for Safety—UL 325, third edition, which were issued after the date of the enactment of this Act [Nov. 16, 1990] to become effective on or before January 1, 1993.

''(B) If, by June 1, 1992, the Underwriters Laboratories, Inc., has not issued a revision to the May 4, 1988, Standards for Safety—UL 325, third edition, to require an entrapment protection feature or device in addition to that required by the May 4, 1988, Standard, the Consumer Product Safety Commission shall begin a rulemaking proceeding, to be completed no later than October 31, 1992, to require an additional such feature or device on all automatic residential garage door openers manufactured on or after January 1, 1993, for sale in the United States. If such a revision is issued by the Underwriters Laboratories, Inc. after the rulemaking has commenced, the rulemaking shall be terminated and the revision shall be incorporated in the consumer product safety rule under subsection (a) unless the Commission has determined under subsection (c) that such revision does not carry out the purposes of subsection (b).

''(c) REVISION OF RULE.—If, after June 1, 1992, or the date of a revision described in subsection (b)(2)(B) if later, the Underwriters Laboratories, Inc. proposes to further revise the entrapment protection requirements of the American National Standards Institute Underwriters Laboratories, Inc. Standards for Safety—UL 325, third edition, the Laboratories shall notify the Consumer Product Safety Commission of the proposed revision and the proposed revision shall be incorporated in the consumer product safety rule under subsection (a) unless, within 30 days of such notice, the Commission notifies the Laboratories that the Commission has determined that such revision does not carry out the purposes of subsection (b).

''(d) LABELING.—On and after January 1, 1991, a manufacturer selling or offering for sale in the United States an automatic residential garage door opener manufactured on or after January 1, 1991, shall clearly identify on any container of the system and on the system the month or week and year the system was manufactured and its conformance with the requirements of subsection (b). The display of the UL logo or listing mark, and compliance with the date marking requirements of UL 325, on both the container and the system, shall satisfy the requirements of this subsection.

''(e) NOTIFICATION.—Effective on and after July 1, 1991, all manufacturers of automatic residential garage door openers shall, in consultation with the Consumer Product Safety Commission, notify the public of the potential for entrapment by garage doors equipped with automatic garage door openers and advise the public to test their openers for the entrapment protection feature or device required by subsection (b).

''(f) PREEMPTION.—In applying section 26(a) of the Consumer Product Safety Act (15 U.S.C. 2075) [15 U.S.C. 2075(a)] with respect to the consumer product safety rule of the Consumer Product Safety Commission under subsection (a), only those provisions of laws of States or political subdivisions which relate to the labeling of automatic residential garage door openers and those provisions which do not provide at least the equivalent degree of protection from the risk of injury associated with automatic residential garage door openers as the consumer product safety rule provides shall be subject to such section.

''(g) REGULATIONS.—Section 553 of title 5, United States Code, shall apply with respect to the issuance of any regulations by the Consumer Product Safety Commission to implement the requirements of this section and sections 7 and 9 of the Consumer Product Safety Act [15 U.S.C. 2056, 2058] do not apply to such issuance. Any additional or revised requirement issued by the Commission shall provide an adequate degree of protection to the public.

''(h) CONSTRUCTION.—Nothing in this section shall affect or modify in any way the obligations or liabilities of any person under the common law or any Federal or State law.''

§ 2056a. Standards and consumer registration of durable nursery products

(a) Short title

This section may be cited as the ''Danny Keysar Child Product Safety Notification Act''.

(b) Safety standards

(1) In general

The Commission shall—

(A) in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts, examine and assess the effectiveness of any voluntary consumer product safety standards for durable infant or toddler products; and

(B) in accordance with section 553 of title 5, promulgate consumer product safety standards that—

(i) are substantially the same as such voluntary standards; or

(ii) are more stringent than such voluntary standards, if the Commission determines that more stringent standards would further reduce the risk of injury associated with such products.

(2) Timetable for rulemaking

Not later than 1 year after August 14, 2008, the Commission shall commence the rulemaking required under paragraph (1) and shall promulgate standards for no fewer than 2 categories of durable infant or toddler products every 6 months thereafter, beginning with the product categories that the Commission determines to be of highest priority, until the Commission has promulgated standards for all such product categories. Thereafter, the Commission shall periodically review and revise the standards set forth under this subsection to ensure that such standards provide the highest level of safety for such products that is feasible.

(3) Judicial review

Any person adversely affected by such standards may file a petition for review under the procedures set forth in section 2060(g) of this title, as added by section 236 of this Act.

(4) Process for considering subsequent revisions to voluntary standard

(A) Notice of adoption of voluntary standard

When the Commission promulgates a consumer product safety standard under this subsection that is based, in whole or in part, on a voluntary standard, the Commission shall notify the organization that issued the voluntary standard of the Commission's action and shall provide a copy of the consumer product safety standard to the organization.

(B) Commission action on revised voluntary standard

If an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. The revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 2058 of this title, effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

(c) Cribs

(1) In general

It shall be a violation of section 2068(a)(1) of this title for any person to which this subsection applies to manufacture, sell, contract to sell or resell, lease, sublet, offer, provide for use, or otherwise place in the stream of commerce a crib that is not in compliance with a standard promulgated under subsection (b).

(2) Persons to which subsection applies

This subsection applies to any person that—

(A) manufactures, distributes in commerce, or contracts to sell cribs;

(B) based on the person's occupation, holds itself out as having knowledge or skill peculiar to cribs, including child care facilities and family child care homes;

(C) is in the business of contracting to sell or resell, lease, sublet, or otherwise place cribs in the stream of commerce; or

(D) owns or operates a place of public accommodation affecting commerce (as defined in section 2203 of this title applied without regard to the phrase ''not owned by the Federal Government'').

(3) Application of any revision

With respect to any revision of the standard promulgated under subsection (b)(1)(B) subsequent to the initial promulgation of a standard under such subsection, paragraph (1) shall apply only to a person that manufactures or imports cribs, unless the Commission determines that application to any other person described in paragraph (2) is necessary to protect against an unreasonable risk to health or safety. If the Commission determines that application to a person described in paragraph (2) is necessary, it shall provide not less than 12 months for such person to come into compliance.

(4) Crib defined

In this subsection, the term ''crib'' includes—

(A) new and used cribs;

(B) full-sized or nonfull-sized cribs; and

(C) portable cribs and crib-pens.

(d) Consumer registration requirement

(1) Rulemaking

Notwithstanding any provision of chapter 6 of title 5 or the Paperwork Reduction Act of

1980 (44 U.S.C. 3501 et seq.), not later than 1 year after August 14, 2008, the Commission shall, pursuant to its authority under section 2065(b) of this title, promulgate a final consumer product safety rule to require each manufacturer of a durable infant or toddler product—

(A) to provide consumers with a postage-paid consumer registration form with each such product;

(B) to maintain a record of the names, addresses, e-mail addresses, and other contact information of consumers who register their ownership of such products with the manufacturer in order to improve the effectiveness of manufacturer campaigns to recall such products; and

(C) to permanently place the manufacturer name and contact information, model name and number, and the date of manufacture on each durable infant or toddler product.

(2) Requirements for registration form

The registration form required to be provided to consumers under paragraph (1) shall—

(A) include spaces for a consumer to provide the consumer's name, address, telephone number, and e-mail address;

(B) include space sufficiently large to permit easy, legible recording of all desired information;

(C) be attached to the surface of each durable infant or toddler product so that, as a practical matter, the consumer must notice and handle the form after purchasing the product;

(D) include the manufacturer's name, model name and number for the product, and the date of manufacture;

(E) include a message explaining the purpose of the registration and designed to encourage consumers to complete the registration;

(F) include an option for consumers to register through the Internet; and

(G) include a statement that information provided by the consumer shall not be used for any purpose other than to facilitate a recall of or safety alert regarding that product.

In issuing regulations under this section, the Commission may prescribe the exact text and format of the required registration form.

(3) Record keeping and notification requirements

The rules required under this section shall require each manufacturer of a durable infant or toddler product to maintain a record of registrants for each product manufactured that includes all of the information provided by each consumer registered, and to use such information to notify such consumers in the event of a voluntary or involuntary recall of or safety alert regarding such product. Each manufacturer shall maintain such a record for a period of not less than 6 years after the date of manufacture of the product. Consumer information collected by a manufacturer under this Act may not be used by the manufacturer, nor disseminated by such manufacturer to any other party, for any purpose other than notification to such consumer in the event of a product recall or safety alert.

(4) Study

The Commission shall conduct a study at such time as it considers appropriate on the effectiveness of the consumer registration forms required by this section in facilitating product recalls and whether such registration forms should be required for other children's products. Not later than 4 years after August 14, 2008, the Commission shall report its findings to the appropriate Congressional committees.

(e) Use of alternative recall notification technology

(1) Technology assessment and report

The Commission shall—

(A) beginning 2 years after a rule is promulgated under subsection (d), regularly review recall notification technology and assess the effectiveness of such technology in facilitating recalls of durable infant or toddler products; and

(B) not later than 3 years after August 14, 2008, and periodically thereafter as the Commission considers appropriate, transmit a report on such assessments to the appropriate Congressional committees.

(2) Determination

If, based on the assessment required by paragraph (1), the Commission determines by rule that a recall notification technology is likely to be as effective or more effective in facilitating recalls of durable infant or toddler products as the registration forms required by subsection (d), the Commission—

(A) shall submit to the appropriate Congressional committees a report on such determination; and

(B) shall permit a manufacturer of durable infant or toddler products to use such technology in lieu of such registration forms to facilitate recalls of durable infant or toddler products.

(f) Definition of durable infant or toddler product

As used in this section, the term ''durable infant or toddler product''—

(1) means a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years; and

(2) includes—

(A) full-size cribs and nonfull-size cribs;

(B) toddler beds;

(C) high chairs, booster chairs, and hook-on chairs;

(D) bath seats;

(E) gates and other enclosures for confining a child;

(F) play yards;

(G) stationary activity centers;

(H) infant carriers;

(I) strollers;

(J) walkers;

(K) swings; and

(L) bassinets and cradles.

(Pub. L. 110–314, title I, § 104, Aug. 14, 2008, 122 Stat. 3028; Pub. L. 112–28, § 3, Aug. 12, 2011, 125 Stat. 279.)

REFERENCES IN TEXT

Section 2060(g) of this title, as added by section 236 of this Act, referred to in subsec. (b)(3), is section 2060(g) of this title, as added by section 236 of Pub. L. 110–314.

The Paperwork Reduction Act of 1980, referred to in subsec. (d)(1), is Pub. L. 96–511, Dec. 11, 1980, 94 Stat. 2812, which was classified principally to chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104–13, §2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

This Act, referred to in subsec. (d)(3), is Pub. L. 110–314, Aug. 14, 2008, 122 Stat. 3016, known as the Consumer Product Safety Improvement Act of 2008. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 2051 of this title and Tables.

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Consumer Product Safety Act which comprises this chapter.

AMENDMENTS

2011—Subsec. (b)(4). Pub. L. 112–28, §3(a), added par. (4).

Subsec. (c)(3), (4). Pub. L. 112–28, §3(b), added par. (3) and redesignated former par. (3) as (4).

DEFINITIONS

For definitions of ''Commission'' and ''appropriate Congressional committees'' used in this section, see section 2(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

§ 2056b. Mandatory toy safety standards

(a) In general

Beginning 180 days after August 14, 2008, the provisions of ASTM International Standard F963–07 Consumer Safety Specifications for Toy Safety (ASTM F963), as it exists on August 14, 2008 (except for section 4.2 and Annex 4 or any provision that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute or any provision that restates or incorporates a regulation promulgated by the Food and Drug Administration or any statute administered by the Food and Drug Administration) shall be considered to be consumer product safety standards issued by the Commission under section 2058 of this title.

(b) Rulemaking for specific toys, components and risks

(1) Evaluation

Not later than 1 year after August 14, 2008, the Commission, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts, shall examine and assess the effectiveness of ASTM F963 or its successor standard (except for section 4.2 and Annex 4), as it relates to safety requirements, safety labeling requirements, and test methods related to—

(A) internal harm or injury hazards caused by the ingestion or inhalation of magnets in children's products;

(B) toxic substances;

(C) toys with spherical ends;

(D) hemispheric-shaped objects;

(E) cords, straps, and elastics; and

(F) battery-operated toys.

(2) Rulemaking

Within 1 year after the completion of the assessment required by paragraph (1), the Commission shall promulgate rules in accordance with section 553 of title 5 that—

(A) take into account other children's product safety rules; and

(B) are more stringent than such standards, if the Commission determines that more stringent standards would further reduce the risk of injury of such toys.

(c) Periodic review

The Commission shall periodically review and revise the rules set forth under this section to ensure that such rules provide the highest level of safety for such products that is feasible.

(d) Consideration of remaining ASTM standards

After promulgating the rules required by subsection (b), the Commission shall—

(1) in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts, examine and assess the effectiveness of ASTM F963 (and alternative health protective requirements to prevent or minimize flammability of children's products) or its successor standard, and shall assess the adequacy of such standards in protecting children from safety hazards; and

(2) in accordance with section 553 of title 5, promulgate consumer product safety rules that—

(A) take into account other children's product safety rules; and

(B) are more stringent than such standards, if the Commission determines that more stringent standards would further reduce the risk of injury associated with such toys.

(e) Prioritization

The Commission shall promulgate rules beginning with the product categories that the Commission determines to be of highest priority, until the Commission has promulgated standards for all such product categories.

(f) Treatment as consumer product safety standards

Rules issued under this section shall be considered consumer product safety standards issued by the Commission under section 2058 of this title.

(g) Revisions

If ASTM International (or its successor entity) proposes to revise ASTM F963–07, or a successor standard, it shall notify the Commission of the proposed revision. The Commission shall incorporate the revision or a section of the revision into the consumer product safety rule. The revised standard shall be considered to be a consumer product safety standard issued by the Consumer Product Safety Commission under section 2058 of this title, effective 180 days after the date on which ASTM International notifies the Commission of the revision unless, within 90

days after receiving that notice, the Commission notifies ASTM International that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard. If the Commission so notifies ASTM International with respect to a proposed revision of the standard, the existing standard shall continue to be considered to be a consumer product safety rule without regard to the proposed revision.

(h) Rulemaking to consider exemption from preemption

(1) Exemption of State law from preemption

Upon application of a State or political subdivision of a State, the Commission shall, after notice and opportunity for oral presentation of views, consider a rulemaking to exempt from the provisions of section 2075(a) of this title (under such conditions as it may impose in the rule) any proposed safety standard or regulation which is described in such application and which is designed to protect against a risk of injury associated with a children's product subject to the consumer product safety standards described in subsection (a) or any rule promulgated under this section. The Commission shall grant such an exemption if the State or political subdivision standard or regulation—

(A) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard or rule under this section; and

(B) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or regulation on interstate commerce, the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such standard or regulation, the cost of complying with such standard or regulation, the geographic distribution of the consumer product to which the standard or regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or regulation, and the need for a national, uniform standard under this Act for such consumer product.

(2) Effect of standards on established State laws

Nothing in this section or in section 2075 of this title shall prevent a State or political subdivision of a State from continuing in effect a safety requirement applicable to a toy or other children's product that is designed to deal with the same risk of injury as the consumer product safety standards established by this section and that is in effect on the day before August 14, 2008, if such State or political subdivision has filed such requirement with the Commission within 90 days after August 14, 2008, in such form and in such manner as the Commission may require.

(i) Judicial review

The issuance of any rule under this section is subject to judicial review as provided in section 2060(g) of this title, as added by section 236 of this Act.

(Pub. L. 110–314, title I, § 106, Aug. 14, 2008, 122 Stat. 3033; Pub. L. 112–28, § 4, Aug. 12, 2011, 125 Stat. 280.)

REFERENCES IN TEXT

This Act, referred to in subsec. (h)(1), is Pub. L. 110–314, Aug. 14, 2008, 122 Stat. 3016, known as the Consumer Product Safety Improvement Act of 2008. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 2051 of this title and Tables.

Section 2060(g) of this title, as added by section 236 of this Act, referred to in subsec. (i), is section 2060(g) of this title, as added by section 236 of Pub. L. 110–314.

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Consumer Product Safety Act which comprises this chapter.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112–28 inserted ''or any provision that restates or incorporates a regulation promulgated by the Food and Drug Administration or any statute administered by the Food and Drug Administration'' after ''or by statute''.

DEFINITION

For definition of ''Commission'' used in this section, see section 2(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

§ 2056c. Sulfur content in drywall standard

(a) Rule on sulfur content in drywall required

Except as provided in subsection (c), not later than 2 years after January 14, 2013, the Consumer Product Safety Commission shall promulgate a final rule pertaining to drywall manufactured or imported for use in the United States that limits sulfur content to a level not associated with elevated rates of corrosion in the home.

(b) Rule making; consumer product safety standard

A rule under subsection (a)—

(1) shall be promulgated in accordance with section 553 of title 5; and

(2) shall be treated as a consumer product safety rule promulgated under section 2058 of this title.

(c) Exception

(1) Voluntary standard

Subsection (a) shall not apply if the Commission determines that—

(A) a voluntary standard pertaining to drywall manufactured or imported for use in the United States limits sulfur content to a level not associated with elevated rates of corrosion in the home;

(B) such voluntary standard is or will be in effect not later than two years after January 14, 2013; and

(C) such voluntary standard is developed by Subcommittee C11.01 on Specifications and Test Methods for Gypsum Products of ASTM International.

(2) Federal Register

Any determination made under paragraph (1) shall be published in the Federal Register.

(d) Treatment of voluntary standard for purposes of enforcement

If the Commission determines that a voluntary standard meets the conditions in subsection (c)(1), the sulfur content limit in such voluntary standard shall be treated as a consumer product safety rule promulgated under section 2058 of this title beginning on the date that is the later of—

(1) 180 days after publication of the Commission's determination under subsection (c); or

(2) the effective date contained in the voluntary standard.

(e) Revision of voluntary standard

If the sulfur content limit of a voluntary standard that met the conditions of subsection (c)(1) is subsequently revised, the organization responsible for the standard shall notify the Commission no later than 60 days after final approval of the revision. The sulfur content limit of the revised voluntary standard shall become enforceable as a Commission rule promulgated under section 2058 of this title, in lieu of the prior version, effective 180 days after the Commission is notified of the revision (or such later date as the Commission considers appropriate), unless within 90 days after receiving that notice the Commission determines that the sulfur content limit of the revised voluntary standard does not meet the requirements of subsection (c)(1)(A), in which case the Commission shall continue to enforce the prior version.

(f) Future rulemaking

The Commission, at any time subsequent to publication of the consumer product safety rule required by subsection (a) or a determination under subsection (c), may initiate a rulemaking in accordance with section 553 of title 5 to modify the sulfur content limit or to include any provision relating only to the composition or characteristics of drywall that the Commission determines is reasonably necessary to protect public health or safety. Any rule promulgated under this subsection shall be treated as a consumer product safety rule promulgated under section 2058 of this title.

(Pub. L. 112–266, §4, Jan. 14, 2013, 126 Stat. 2438.)

CODIFICATION

Section was enacted as part of the Drywall Safety Act of 2012, and not as part of the Consumer Product Safety Act which comprises this chapter.

DRYWALL LABELING REQUIREMENT

Pub. L. 112–266, §3, Jan. 14, 2013, 126 Stat. 2437, provided that:

''(a) LABELING REQUIREMENT.—Beginning 180 days after the date of the enactment of this Act [Jan. 14, 2013], the gypsum board labeling provisions of standard ASTM C1264–11 of ASTM International, as in effect on the day before the date of the enactment of this Act, shall be treated as a rule promulgated by the Consumer Product Safety Commission under section 14(c) of the Consumer Product Safety Act (15 U.S.C. 2063(c)).

''(b) REVISION OF STANDARD.—If the gypsum board labeling provisions of the standard referred to in subsection (a) are revised on or after the date of the enactment of this Act, ASTM International shall notify the Commission of such revision no later than 60 days after final approval of the revision by ASTM International. The revised provisions shall be treated as a rule promulgated by the Commission under section 14(c) of such Act (15 U.S.C. 2063(c)), in lieu of the prior version, effective 180 days after the Commission is notified of the revision (or such later date as the Commission considers appropriate), unless within 90 days after receiving that notice the Commission determines that the revised provisions do not adequately identify gypsum board by manufacturer and month and year of manufacture, in which case the Commission shall continue to enforce the prior version.''

REVISION OF REMEDIATION GUIDANCE FOR DRYWALL DISPOSAL REQUIRED

Pub. L. 112–266, §5, Jan. 14, 2013, 126 Stat. 2439, provided that: ''Not later than 120 days after the date of the enactment of this Act [Jan. 14, 2013], the Consumer Product Safety Commission shall revise its guidance entitled 'Remediation Guidance for Homes with Corrosion from Problem Drywall' to specify that problematic drywall removed from homes pursuant to the guidance should not be reused or used as a component in production of new drywall.''

§ 2057. Banned hazardous products

Whenever the Commission finds that—

(1) a consumer product is being, or will be, distributed in commerce and such consumer product presents an unreasonable risk of injury; and

(2) no feasible consumer product safety standard under this chapter would adequately protect the public from the unreasonable risk of injury associated with such product,

the Commission may, in accordance with section 2058 of this title, promulgate a rule declaring such product a banned hazardous product.

(Pub. L. 92–573, §8, Oct. 27, 1972, 86 Stat. 1215; Pub. L. 97–35, title XII, §1203(c), Aug. 13, 1981, 95 Stat. 713.)

AMENDMENTS

1981—Pub. L. 97–35 substituted ''may, in accordance with'' for ''may propose and, in accordance with''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 applicable with respect to regulations under this chapter and chapters 25 and 30 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

§ 2057a. Banning of butyl nitrite

(a) In general

Except as provided in subsection (b), butyl nitrite shall be considered a banned hazardous product under section 2057 of this title.

(b) Lawful purposes

For the purposes of section 2057 of this title, it shall not be unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the United States butyl nitrite for any commercial purpose or any other purpose approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(c) Definitions

For purposes of this section:

(1) The term ''butyl nitrite'' includes n-butyl nitrite, isobutyl nitrite, secondary butyl nitrite, tertiary butyl nitrite, and mixtures containing these chemicals.

(2) The term ''commercial purpose'' means any commercial purpose other than for the

production of consumer products containing butyl nitrite that may be used for inhaling or otherwise introducing butyl nitrite into the human body for euphoric or physical effects.

(d) Effective date

This section shall take effect 90 days after November 18, 1988.

(Pub. L. 100–690, title II, § 2404, Nov. 18, 1988, 102 Stat. 4231.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

CODIFICATION

Section was enacted as part of the Anti-Drug Abuse Act of 1988 and also as part of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988, and not as part of the Consumer Product Safety Act which comprises this chapter.

§ 2057b. Banning of isopropal nitrite and other nitrites

(a) In general

Except as provided in subsection (b), volatile alkyl nitrite shall be considered a banned hazardous product under section 2057 of this title.

(b) Lawful purposes

For the purposes of section 2057 of this title, it shall not be unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the United States volatile alkyl nitrites for any commercial purpose or any other purpose approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(c) "Commercial purpose" defined

For purposes of this section, the term ''commercial purpose'' means any commercial purpose other than for the production of consumer products containing volatile alkyl nitrites that may be used for inhaling or otherwise introducing volatile alkyl nitrites into the human body for euphoric or physical effects.

(d) Effective date

This section shall take effect 90 days after November 29, 1990.

(Pub. L. 101–647, title XXXII, § 3202, Nov. 29, 1990, 104 Stat. 4917.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

CODIFICATION

Section was enacted as part of the Crime Control Act of 1990, and not as part of the Consumer Product Safety Act which comprises this chapter.

§ 2057c. Prohibition on sale of certain products containing specified phthalates

(a) Prohibition on the sale of certain products containing phthalates

Beginning on the date that is 180 days after August 14, 2008, it shall be unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the United States any children's toy or child care article that contains concentrations of more than 0.1 percent of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP).

(b) Prohibition on the sale of additional products containing certain phthalates

(1) Interim prohibition

Beginning on the date that is 180 days after August 14, 2008, and until a final rule is promulgated under paragraph (3), it shall be unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the United States any children's toy that can be placed in a child's mouth or child care article that contains concentrations of more than 0.1 percent of diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

(2) Chronic Hazard Advisory Panel

(A) Appointment

Not earlier than 180 days after August 14, 2008, the Commission shall begin the process of appointing a Chronic Hazard Advisory Panel pursuant to the procedures of section 28 of the Consumer Product Safety Act (15 U.S.C. 2077) to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles.

(B) Examination

The panel shall, within 18 months after its appointment under subparagraph (A), complete an examination of the full range of phthalates that are used in products for children and shall—

(i) examine all of the potential health effects (including endocrine disrupting effects) of the full range of phthalates;

(ii) consider the potential health effects of each of these phthalates both in isolation and in combination with other phthalates;

(iii) examine the likely levels of children's, pregnant women's, and others' exposure to phthalates, based on a reasonable estimation of normal and foreseeable use and abuse of such products;

(iv) consider the cumulative effect of total exposure to phthalates, both from children's products and from other sources, such as personal care products;

(v) review all relevant data, including the most recent, best-available, peer-reviewed, scientific studies of these phthalates and phthalate alternatives that employ objective data collection practices or employ other objective methods;

(vi) consider the health effects of phthalates not only from ingestion but

also as a result of dermal, hand-to-mouth, or other exposure;

(vii) consider the level at which there is a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals and their offspring, considering the best available science, and using sufficient safety factors to account for uncertainties regarding exposure and susceptibility of children, pregnant women, and other potentially susceptible individuals; and

(viii) consider possible similar health effects of phthalate alternatives used in children's toys and child care articles.

The panel's examinations pursuant to this paragraph shall be conducted *de novo*. The findings and conclusions of any previous Chronic Hazard Advisory Panel on this issue and other studies conducted by the Commission shall be reviewed by the panel but shall not be considered determinative.

(C) Report

Not later than 180 days after completing its examination, the panel appointed under subparagraph (A) shall report to the Commission the results of the examination conducted under this section and shall make recommendations to the Commission regarding any phthalates (or combinations of phthalates) in addition to those identified in subsection (a) or phthalate alternatives that the panel determines should be declared banned hazardous substances.

(3) Permanent prohibition by rule

Not later than 180 days after receiving the report of the panel under paragraph (2)(C), the Commission shall, pursuant to section 553 of title 5, promulgate a final rule to—

(A) determine, based on such report, whether to continue in effect the prohibition under paragraph (1), in order to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety; and

(B) evaluate the findings and recommendations of the Chronic Hazard Advisory Panel and declare any children's product containing any phthalates to be a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057), as the Commission determines necessary to protect the health of children.

(c) Application

Effective on August 12, 2011,[1] subsections (a) and (b)(1) and any rule promulgated under subsection (b)(3) shall apply to any plasticized component part of a children's toy or child care article or any other component part of a children's toy or child care article that is made of other materials that may contain phthalates.

(d) Exclusion for inaccessible component parts

(1) In general

The prohibitions established under subsections (a) and (b) shall not apply to any component part of a children's toy or child care article that is not accessible to a child through normal and reasonably foreseeable use and abuse of such product, as determined by the Commission. A component part is not accessible under this paragraph if such component part is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product. Reasonably foreseeable use and abuse shall include swallowing, mouthing, breaking, or other children's activities, and the aging of the product.

(2) Limitation

The Commission may revoke an exclusion or all exclusions granted under paragraph (1) at any time and require that any or all component parts manufactured after such exclusion is revoked comply with the prohibitions established under subsections (a) and (b) if the Commission finds, based on scientific evidence, that such compliance is necessary to protect the public health or safety.

(3) Inaccessibility proceeding

Within 1 year after August 12, 2011, the Commission shall—

(A) promulgate a rule providing guidance with respect to what product components, or classes of components, will be considered to be inaccessible for purposes of paragraph (1); or

(B) adopt the same guidance with respect to inaccessibility that was adopted by the Commission with regards to accessibility of lead under section 1278a(b)(2)(B) of this title, with additional consideration, as appropriate, of whether such component can be placed in a child's mouth.

(4) Application pending commission guidance

Until the Commission promulgates a rule pursuant to paragraph (3), the determination of whether a product component is inaccessible to a child shall be made in accordance with the requirements laid out in paragraph (1) for considering a component to be inaccessible to a child.

(e) Treatment of violation

A violation of subsection (a) or (b)(1) or any rule promulgated by the Commission under subsection (b)(3) shall be treated as a violation of section 19(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(1)).

(f) Treatment as consumer product safety standards; effect on State laws

Subsections (a) and (b)(1) and any rule promulgated under subsection (b)(3) shall be considered consumer product safety standards under the Consumer Product Safety Act [15 U.S.C. 2051 et seq.]. Nothing in this section or the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) shall be construed to preempt or otherwise affect any State requirement with respect to any phthalate alternative not specifically regulated in a consumer product safety standard under the Consumer Product Safety Act.

(g) Definitions

(1) Defined terms

As used in this section:

[1] See References in Text note below.

(A) The term ''phthalate alternative'' means any common substitute to a phthalate, alternative material to a phthalate, or alternative plasticizer.

(B) The term ''children's toy'' means a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays.

(C) The term ''child care article'' means a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.

(D) The term ''consumer product'' has the meaning given such term in section 3(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)).

(2) Determination guidelines

(A) Age

In determining whether products described in paragraph (1) are designed or intended for use by a child of the ages specified, the following factors shall be considered:

(i) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.

(ii) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children of the ages specified.

(iii) Whether the product is commonly recognized by consumers as being intended for use by a child of the ages specified.

(iv) The Age Determination guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.

(B) Toy that can be placed in a child's mouth

For purposes of this section a toy can be placed in a child's mouth if any part of the toy can actually be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the children's product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth.

(Pub. L. 110–314, title I, § 108, Aug. 14, 2008, 122 Stat. 3036; Pub. L. 112–28, § 5(a), Aug. 12, 2011, 125 Stat. 280.)

REFERENCES IN TEXT

August 12, 2011, referred to in subsec. (c), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 112–28, which enacted subsec. (c), to reflect the probable intent of Congress.

The Consumer Product Safety Act, referred to in subsec. (f), is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Consumer Product Safety Act which comprises this chapter.

AMENDMENTS

2011—Subsecs. (c) to (g). Pub. L. 112–28 added subsecs. (c) and (d) and redesignated former subsecs. (c) to (e) as (e) to (g), respectively.

DEFINITION

For definition of ''Commission'' used in this section, see section 2(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

§ 2058. Procedure for consumer product safety rules

(a) Commencement of proceeding; publication of prescribed notice of proposed rulemaking; transmittal of notice

A proceeding for the development of a consumer product safety rule may be commenced by the publication in the Federal Register of an advance notice of proposed rulemaking which shall—

(1) identify the product and the nature of the risk of injury associated with the product;

(2) include a summary of each of the regulatory alternatives under consideration by the Commission (including voluntary consumer product safety standards);

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceedings, together with a summary of the reasons why the Commission believes preliminarily that such standard does not eliminate or adequately reduce the risk of injury identified in paragraph (1);

(4) invite interested persons to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days or more than 60 days after the date of publication of the notice), comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk;

(5) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), an existing standard or a portion of a standard as a proposed consumer product safety standard; and

(6) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), a statement of intention to modify or develop a voluntary consumer product safety standard to address the risk of injury identified in paragraph (1) together with a description of a plan to modify or develop the standard.

The Commission shall transmit such notice within 10 calendar days to the appropriate Congressional committees.

(b) Voluntary standard; publication as proposed rule; notice of reliance of Commission on standard

(1) If the Commission determines that any standard submitted to it in response to an invitation in a notice published under subsection (a)(5) if promulgated (in whole, in part, or in combination with any other standard submitted to the Commission or any part of such a standard) as a consumer product safety standard, would eliminate or adequately reduce the risk of injury identified in a notice under subsection (a)(1), the Commission may publish such standard, in whole, in part, or in such combination and with nonmaterial modifications, as a proposed consumer product safety rule.

(2) If the Commission determines that—

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (a)(6) is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and

(B) it is likely that there will be substantial compliance with such standard,

the Commission shall terminate any proceeding to promulgate a consumer product safety rule respecting such risk of injury and shall publish in the Federal Register a notice which includes the determination of the Commission and which notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury, except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary consumer product safety standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.

(c) Publication of proposed rule; preliminary regulatory analysis; contents; transmittal of notice

No consumer product safety rule may be proposed by the Commission unless the Commission publishes in the Federal Register the text of the proposed rule, including any alternatives, which the Commission proposes to promulgate, together with a preliminary regulatory analysis containing—

(1) a preliminary description of the potential benefits and potential costs of the proposed rule, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

(2) a discussion of the reasons any standard or portion of a standard submitted to the Commission under subsection (a)(5) was not published by the Commission as the proposed rule or part of the proposed rule;

(3) a discussion of the reasons for the Commission's preliminary determination that efforts proposed under subsection (a)(6) and assisted by the Commission as required by section 2054(a)(3) of this title would not, within a reasonable period of time, be likely to result in the development of a voluntary consumer product safety standard that would eliminate or adequately reduce the risk of injury addressed by the proposed rule; and

(4) a description of any reasonable alternatives to the proposed rule, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed rule.

The Commission shall transmit such notice within 10 calendar days to the appropriate Congressional committees. Any proposed consumer product safety rule shall be issued within twelve months after the date of publication of the notice, unless the Commission determines that such proposed rule is not reasonably necessary to eliminate or reduce the risk of injury associated with the product or is not in the public interest. The Commission may extend the twelve-month period for good cause. If the Commission extends such period, it shall immediately transmit notice of such extension to the appropriate Congressional committees. Such notice shall include an explanation of the reasons for such extension, together with an estimate of the date by which the Commission anticipates such rulemaking will be completed. The Commission shall publish notice of such extension and the information submitted to the Congress in the Federal Register. Nothing in this subsection shall preclude any person from submitting an existing standard or portion of a standard as a proposed consumer product safety standard.

(d) Promulgation of rule; time

(1) Within 60 days after the publication under subsection (c) of a proposed consumer product safety rule respecting a risk of injury associated with a consumer product, the Commission shall—

(A) promulgate a consumer product safety rule respecting the risk of injury associated with such product, if it makes the findings required under subsection (f), or

(B) withdraw the applicable notice of proposed rulemaking if it determines that such rule is not (i) reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product, or (ii) in the public interest;

except that the Commission may extend such 60-day period for good cause shown (if it publishes its reasons therefor in the Federal Register).

(2) Consumer product safety rules shall be promulgated in accordance with section 553 of title 5, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(e) Expression of risk of injury; consideration of available product data; needs of elderly and handicapped

A consumer product safety rule shall express in the rule itself the risk of injury which the standard is designed to eliminate or reduce. In promulgating such a rule the Commission shall consider relevant available product data including the results of research, development, testing, and investigation activities conducted generally and pursuant to this chapter. In the promulgation of such a rule the Commission shall also consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by such rule.

(f) Findings; final regulatory analysis; judicial review of rule

(1) Prior to promulgating a consumer product safety rule, the Commission shall consider, and shall make appropriate findings for inclusion in such rule with respect to—

(A) the degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(B) the approximate number of consumer products, or types or classes thereof, subject to such rule;

(C) the need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need; and

(D) any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

(2) The Commission shall not promulgate a consumer product safety rule unless it has prepared, on the basis of the findings of the Commission under paragraph (1) and on other information before the Commission, a final regulatory analysis of the rule containing the following information:

(A) A description of the potential benefits and potential costs of the rule, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs.

(B) A description of any alternatives to the final rule which were considered by the Commission, together with a summary description of their potential benefits and costs and a brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

The Commission shall publish its final regulatory analysis with the rule.

(3) The Commission shall not promulgate a consumer product safety rule unless it finds (and includes such finding in the rule)—

(A) that the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product;

(B) that the promulgation of the rule is in the public interest;

(C) in the case of a rule declaring the product a banned hazardous product, that no feasible consumer product safety standard under this chapter would adequately protect the public from the unreasonable risk of injury associated with such product;

(D) in the case of a rule which relates to a risk of injury with respect to which persons who would be subject to such rule have adopted and implemented a voluntary consumer product safety standard, that—

(i) compliance with such voluntary consumer product safety standard is not likely to result in the elimination or adequate reduction of such risk of injury; or

(ii) it is unlikely that there will be substantial compliance with such voluntary consumer product safety standard;

(E) that the benefits expected from the rule bear a reasonable relationship to its costs; and

(F) that the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

(4)(A) Any preliminary or final regulatory analysis prepared under subsection (c) or (f)(2) shall not be subject to independent judicial review, except that when an action for judicial review of a rule is instituted, the contents of any such regulatory analysis shall constitute part of the whole rulemaking record of agency action in connection with such review.

(B) The provisions of subparagraph (A) shall not be construed to alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

(g) Effective date of rule or standard; stockpiling of product

(1) Each consumer product safety rule shall specify the date such rule is to take effect not exceeding 180 days from the date promulgated, unless the Commission finds, for good cause shown, that a later effective date is in the public interest and publishes its reasons for such finding. The effective date of a consumer product safety standard under this chapter shall be set at a date at least 30 days after the date of promulgation unless the Commission for good cause shown determines that an earlier effective date is in the public interest. In no case may the effective date be set at a date which is earlier than the date of promulgation. A consumer product safety standard shall be applicable only to consumer products manufactured after the effective date.

(2) The Commission may by rule prohibit a manufacturer of a consumer product from stockpiling any product to which a consumer product safety rule applies, or to which a rule under this chapter or similar rule, regulation, standard, or ban under any other Act enforced by the Commission applies, so as to prevent such manufacturer from circumventing the purpose of such

rule, regulation, standard, or ban. For purposes of this paragraph, the term ''stockpiling'' means manufacturing or importing a product between the date of promulgation of such rule, regulation, standard, or ban and its effective date at a rate which is significantly greater (as determined under the rule under this paragraph) than the rate at which such product was produced or imported during a base period (prescribed in the rule under this paragraph) ending before the date of promulgation of the rule, regulation, standard, or ban.

(h) Amendment or revocation of rule

The Commission may by rule amend or revoke any consumer product safety rule. Such amendment or revocation shall specify the date on which it is to take effect which shall not exceed 180 days from the date the amendment or revocation is published unless the Commission finds for good cause shown that a later effective date is in the public interest and publishes its reasons for such finding. Where an amendment involves a material change in a consumer product safety rule, sections 2056 and 2057 of this title, and subsections (a) through (g) of this section shall apply. In order to revoke a consumer product safety rule, the Commission shall publish a proposal to revoke such rule in the Federal Register, and allow oral and written presentations in accordance with subsection (d)(2) of this section. It may revoke such rule only if it determines that the rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product. Section 2060 of this title shall apply to any amendment of a consumer product safety rule which involves a material change and to any revocation of a consumer product safety rule, in the same manner and to the same extent as such section applies to the Commission's action in promulgating such a rule.

(i) Petition to initiate rulemaking

The Commission shall grant, in whole or in part, or deny any petition under section 553(e) of title 5 requesting the Commission to initiate a rulemaking, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for granting or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.

(Pub. L. 92–573, §9, Oct. 27, 1972, 86 Stat. 1215; Pub. L. 94–284, §9, May 11, 1976, 90 Stat. 506; Pub. L. 95–631, §4(d), Nov. 10, 1978, 92 Stat. 3744; Pub. L. 97–35, title XII, §1203(a), Aug. 13, 1981, 95 Stat. 704; Pub. L. 101–608, title I, §§108(a), 109, 110(a), Nov. 16, 1990, 104 Stat. 3112, 3113; Pub. L. 110–314, title II, §§204(a)(1), 213, 235(c)(3), Aug. 14, 2008, 122 Stat. 3040, 3052, 3074.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §§204(a)(1)(A), 235(c)(3), substituted ''may be commenced'' for ''shall be commenced'' in introductory provisions and ''the appropriate Congressional committees'' for ''the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives'' in concluding provisions.

Subsec. (b). Pub. L. 110–314, §204(a)(1)(B), which directed amendment of subsec. (b) by substituting ''in a notice'' for ''in the notice'', was executed by making the substitution the first place the words appeared in par. (1) after ''risk of injury identified'', to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 110–314, §235(c)(3), substituted ''the appropriate Congressional committees'' for ''the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives'' in two places in concluding provisions.

Pub. L. 110–314, §204(a)(1)(C)–(E), in introductory provisions, substituted ''unless the'' for ''unless, not less than 60 days after publication of the notice required in subsection (a) of this section, the'' and in concluding provisions, substituted ''the notice,'' for ''an advance notice of proposed rulemaking under subsection (a) of this section relating to the product involved,'' and ''Register. Nothing in this subsection shall preclude any person from submitting an existing standard or portion of a standard as a proposed consumer product safety standard.'' for ''Register.''

Subsec. (g)(2). Pub. L. 110–314, §213, inserted ''or to which a rule under this chapter or similar rule, regulation, standard, or ban under any other Act enforced by the Commission applies,'' after ''applies,'' and substituted ''rule, regulation, standard, or ban'' for ''consumer product safety rule'' the second, third, and fourth places it appeared.

1990—Subsec. (b)(2). Pub. L. 101–608, §108(a), struck out period at end and inserted '', except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary consumer product safety standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.''

Subsec. (c). Pub. L. 101–608, §109, inserted at end ''Any proposed consumer product safety rule shall be issued within twelve months after the date of publication of an advance notice of proposed rulemaking under subsection (a) relating to the product involved, unless the Commission determines that such proposed rule is not reasonably necessary to eliminate or reduce the risk of injury associated with the product or is not in the public interest. The Commission may extend the twelve-month period for good cause. If the Commission extends such period, it shall immediately transmit notice of such extension to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives. Such notice shall include an explanation of the reasons for such extension, together with an estimate of the date by which the Commission anticipates such rulemaking will be completed. The Commission shall publish notice of such extension and the information submitted to the Congress in the Federal Register.''

Subsec. (i). Pub. L. 101–608, §110(a), added subsec. (i).

1981—Subsec. (a). Pub. L. 97–35 amended subsec. (a) generally, substituting provisions for the commencement of rule-making proceedings by the publication of a notice of proposed rule-making for provisions for the promulgation of rule after publication of a notice ac-

cording to specified provisions of law and to withdraw applicable notice of proceeding upon determination that such rule was not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product or that it was in the public interest, and providing for certain other procedural safeguards.

Subsec. (b). Pub. L. 97–35 amended subsec. (b) generally, substituting provisions relating to the publication of a voluntary standard as a proposed consumer product safety rule and notice of reliance by the Commission on such standard for provisions that a consumer product safety rule shall express the risk of injury which the standard is designed to eliminate or reduce.

Subsec. (c). Pub. L. 97–35 amended subsec. (c) generally, substituting provisions relating to the publication in the Federal Register of the text of the proposed rule, including alternatives, with a preliminary regulatory analysis, and for the transmittal of such notice to certain committees of Congress for provisions relating to the requirement that the Commission make appropriate findings with respect to certain specified factors for inclusion in a consumer product safety rule.

Subsec. (d). Pub. L. 97–35 amended subsec. (d) generally, substituting provisions relating to the time for promulgation of the rule in accordance with section 553 of title 5 or withdrawal of the applicable notice for provisions relating to the effective dates for rules and standards and the authority of the Commission to prohibit stockpiling.

Subsec. (e). Pub. L. 97–35 amended subsec. (e) generally, substituting provisions relating to the requirement that the consumer product safety rule express the risk of injury which is to be eliminated or reduced and requiring, that in promulgating the rule, the Commission to consider available product data and the needs of the elderly and handicapped persons for provisions relating to the amendment and revocation of rules.

Subsecs. (f) to (h). Pub. L. 97–35 added subsecs. (f) to (h).

1978—Subsec. (a)(1), (2). Pub. L. 95–631 substituted in pars. (1) and (2) reference to section 2056 of this title for prior reference to section 2056(c), (e)(1), or (f) of this title.

1976—Subsec. (b). Pub. L. 94–284 inserted provision directing the Commission to take into consideration the special needs of the elderly and the handicapped in promulgating a consumer product safety rule.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 applicable with respect to regulations under this chapter and chapters 25 and 30 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

§ 2059. Repealed. Pub. L. 97–35, title XII, § 1210, Aug. 13, 1981, 95 Stat. 721

Section, Pub. L. 92–573, § 10, Oct. 27, 1972, 86 Stat. 1217; Pub. L. 94–284, § 10(a), May 11, 1976, 90 Stat. 506, related to filing of a petition by an interested person for issuance, amendment, or revocation of a consumer product safety rule.

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 14, 1981, see section 1215 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

§ 2060. Judicial review of consumer product safety rules

(a) Petition by persons adversely affected, consumers, or consumer organizations

Not later than 60 days after a consumer product safety rule is promulgated by the Commission, any person adversely affected by such rule, or any consumer or consumer organization, may file a petition with the United States court of appeals for the District of Columbia, or for the circuit in which such person, consumer, or organization resides or has his principal place of business for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose and to the Attorney General. The record of the proceedings on which the Commission based its rule shall be filed in the court as provided for in section 2112 of title 28. For purposes of this section, the term ''record'' means such consumer product safety rule; any notice or proposal published pursuant to section 2056, 2057, or 2058 of this title; the transcript required by section 2058(d)(2) of this title of any oral presentation; any written submission of interested parties; and any other information which the Commission considers relevant to such rule.

(b) Additional data, views, or arguments

If the petitioner applies to the court for leave to adduce additional data, views, or arguments and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceeding before the Commission, the court may order the Commission to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions. The Commission may modify its findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original rule, with the return of such additional data, views, or arguments.

(c) Jurisdiction; costs and attorneys' fees; substantial evidence to support administrative findings

Upon the filing of the petition under subsection (a) of this section the court shall have jurisdiction to review the consumer product safety rule in accordance with chapter 7 of title 5, and to grant appropriate relief, including interim relief, as provided in such chapter. A court may in the interest of justice include in such relief an award of the costs of suit, including reasonable attorneys' fees (determined in accordance with subsection (f)[1] and reasonable expert witnesses' fees. Attorneys' fees may be awarded against the United States (or any agency or official of the United States) without regard to section 2412 of title 28 or any other provision of law. The consumer product safety rule shall not be affirmed unless the Commission's findings under sections 2058(f)(1) and 2058(f)(3) of this title are supported by substantial evidence on the record taken as a whole.

(d) Supreme Court review

The judgment of the court affirming or setting aside, in whole or in part, any consumer product safety rule shall be final, subject to review by the Supreme Court of the United States upon

[1] So in original. Probably should be followed by a closing parenthesis.

certiorari or certification, as provided in section 1254 of title 28.

(e) Other remedies

The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

(f) Computation of reasonable fee for attorney

For purposes of this section and sections 2072(a) and 2073 of this title, a reasonable attorney's fee is a fee (1) which is based upon (A) the actual time expended by an attorney in providing advice and other legal services in connection with representing a person in an action brought under this section, and (B) such reasonable expenses as may be incurred by the attorney in the provision of such services, and (2) which is computed at the rate prevailing for the provision of similar services with respect to actions brought in the court which is awarding such fee.

(g) Expedited judicial review

(1) Application

This subsection applies, in lieu of the preceding subsections of this section, to judicial review of—

(A) any consumer product safety rule promulgated by the Commission pursuant to section 2064(j) of this title (relating to identification of substantial hazards);

(B) any consumer product safety standard promulgated by the Commission pursuant to section 2089 of this title (relating to all-terrain vehicles);

(C) any standard promulgated by the Commission under section 2056a of this title (relating to durable infant and toddler products); and

(D) any consumer product safety standard promulgated by the Commission under section 2056b of this title (relating to mandatory toy safety standards).

(2) In general

Not later than 60 days after the promulgation, by the Commission, of a rule or standard to which this subsection applies, any person adversely affected by such rule or standard may file a petition with the United States Court of Appeals for the District of Columbia Circuit for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose and to the Attorney General. The record of the proceedings on which the Commission based its rule shall be filed in the court as provided for in section 2112 of title 28.

(3) Review

Upon the filing of the petition under paragraph (2) of this subsection, the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief, including interim relief, as provided in such chapter.

(4) Conclusiveness of judgment

The judgment of the court affirming or setting aside, in whole or in part, any final rule under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(5) Further review

A rule or standard with respect to which this subsection applies shall not be subject to judicial review in proceedings under section 2066 of this title (relating to imported products) or in civil or criminal proceedings for enforcement.

(Pub. L. 92–573, §11, Oct. 27, 1972, 86 Stat. 1218; Pub. L. 94–284, §§10(b), 11(a), May 11, 1976, 90 Stat. 507; Pub. L. 97–35, title XII, §1211(h)(1)–(3)(A), Aug. 13, 1981, 95 Stat. 723; Pub. L. 97–414, §9(j)(2), Jan. 4, 1983, 96 Stat. 2064; Pub. L. 110–314, title II, §236(a), Aug. 14, 2008, 122 Stat. 3075.)

AMENDMENTS

2008—Subsec. (g). Pub. L. 110–314 added subsec. (g).

1983—Subsec. (c). Pub. L. 97–414 substituted ''subsection (f)'' for ''section 2059(e)(4) of this title''.

1981—Subsec. (a). Pub. L. 97–35, §1211(h)(2), substituted reference to section 2058(d)(2) of this title for reference to section 2058(a)(2) of this title.

Subsec. (c). Pub. L. 97–35, §1211(h)(1), substituted reference to section 2058(f)(1) and (3) of this title for reference to section 2058(c) of this title.

Subsec. (f). Pub. L. 97–35, §1211(h)(3)(A), added subsec. (f).

1976—Subsec. (a). Pub. L. 94–284, §11(a), permitted the Commission to file the record of its proceedings on which its rule was based with the court in lieu of transmitting the record to the Attorney General.

Subsec. (c). Pub. L. 94–284, §10(b), inserted provision permitting the court to award costs, including reasonable attorneys' fees, in the interest of justice.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

PENDING ACTIONS UNAFFECTED

Pub. L. 110–314, title II, §236(b), Aug. 14, 2008, 122 Stat. 3076, provided that: ''The amendment made by subsection (a) [amending this section] shall not apply to any petition filed before the date of enactment of this Act [Aug. 14, 2008] for judicial review of any action by the Consumer Product Safety Commission.''

§ 2061. Imminent hazards

(a) Filing of action

The Commission may file in a United States district court an action (1) against an imminently hazardous consumer product for seizure of such product under subsection (b)(2), or (2) against any person who is a manufacturer, distributor, or retailer of such product, or (3) against both. Such an action may be filed notwithstanding the existence of a consumer product safety rule applicable to such product, or the pendency of any administrative or judicial proceedings under any other provision of this chapter. As used in this section, and hereinafter in this chapter, the term ''imminently hazardous consumer product'' means a consumer product which presents imminent and unreasonable risk of death, serious illness, or severe personal injury.

(b) Relief; product condemnation and seizure

(1) The district court in which such action is filed shall have jurisdiction to declare such product an imminently hazardous consumer

product, and (in the case of an action under subsection (a)(2) of this section) to grant (as ancillary to such declaration or in lieu thereof) such temporary or permanent relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of such risk to purchasers of such product known to the defendant, public notice, the recall, the repair or the replacement of, or refund for, such product.

(2) In the case of an action under subsection (a)(1) of this section, the consumer product may be proceeded against by process of libel for the seizure and condemnation of such product in any United States district court within the jurisdiction of which such consumer product is found. Proceedings and cases instituted under the authority of the preceding sentence shall conform as nearly as possible to proceedings in rem in admiralty.

(c) Consumer product safety rule

Where appropriate, concurrently with the filing of such action or as soon thereafter as may be practicable, the Commission shall initiate a proceeding to promulgate a consumer product safety rule applicable to the consumer product with respect to which such action is filed.

(d) Jurisdiction and venue; process; subpena

(1) An action under subsection (a)(2) of this section may be brought in the United States district court for the District of Columbia or in any judicial district in which any of the defendants is found, is an inhabitant or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. Subpenas requiring attendance of witnesses in such an action may run into any other district. In determining the judicial district in which an action may be brought under this section in instances in which such action may be brought in more than one judicial district, the Commission shall take into account the convenience of the parties.

(2) Whenever proceedings under this section involving substantially similar consumer products are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all other parties in interest.

(e) Employment of attorneys by Commission

Notwithstanding any other provision of law, in any action under this section, the Commission may direct attorneys employed by it to appear and represent it.

(g)[1] Cost-benefit analysis of compliance with relief ordered in action for judicial review of consumer product safety rule not required

Nothing in this section shall be construed to require the Commission, in determining whether to bring an action against a consumer product or a person under this section, to prepare a comparison of the costs that would be incurred in complying with the relief that may be ordered in such action with the benefits to the public from such relief.

[1] So in original. No subsec. (f) has been enacted.

(Pub. L. 92–573, § 12, Oct. 27, 1972, 86 Stat. 1218; Pub. L. 97–35, title XII, § 1205(a)(2), Aug. 13, 1981, 95 Stat. 716; Pub. L. 101–608, title I, § 111(a)(1), Nov. 16, 1990, 104 Stat. 3114.)

AMENDMENTS

1990—Subsec. (g). Pub. L. 101–608 added subsec. (g).

1981—Subsecs. (d) to (f). Pub. L. 97–35 redesignated subsecs. (e) and (f) as (d) and (e), respectively. Former subsec. (d), which provided for consultation with the Product Safety Advisory Council by the Commission prior to commencing an action, was struck out.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

§ 2062. Repealed. Pub. L. 97–35, title XII, § 1211(b), Aug. 13, 1981, 95 Stat. 721

Section, Pub. L. 92–573, § 13, Oct. 27, 1972, 86 Stat. 1219, provided that Commission could prescribe procedures to insure that manufacturer of a new consumer product notify Commission of new product prior to its distribution.

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

§ 2063. Product certification and labeling

(a) Certification accompanying product; products with more than one manufacturer

(1) GENERAL CONFORMITY CERTIFICATION.—Except as provided in paragraphs (2) and (3), every manufacturer of a product which is subject to a consumer product safety rule under this chapter or similar rule, ban, standard, or regulation under any other Act enforced by the Commission and which is imported for consumption or warehousing or distributed in commerce (and the private labeler of such product if such product bears a private label) shall issue a certificate which—

(A) shall certify, based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product under this chapter or any other Act enforced by the Commission; and

(B) shall specify each such rule, ban, standard, or regulation applicable to the product.

(2) THIRD PARTY TESTING REQUIREMENT.—Effective on the dates provided in paragraph (3), before importing for consumption or warehousing or distributing in commerce any children's product that is subject to a children's product safety rule, every manufacturer of such children's product (and the private labeler of such children's product if such children's product bears a private label) shall—

(A) submit sufficient samples of the children's product, or samples that are identical in all material respects to the product, to a third party conformity assessment body accredited under paragraph (3) to be tested for compliance with such children's product safety rule; and

(B) based on such testing, issue a certificate that certifies that such children's product

complies with the children's product safety rule based on the assessment of a third party conformity assessment body accredited to conduct such tests.

A manufacturer or private labeler shall issue either a separate certificate for each children's product safety rule applicable to a product or a combined certificate that certifies compliance with all applicable children's product safety rules, in which case each such rule shall be specified.

(3) SCHEDULE FOR IMPLEMENTATION OF THIRD PARTY TESTING.—

(A) GENERAL APPLICATION.—Except as provided under subparagraph (F), the requirements of paragraph (2) shall apply to any children's product manufactured more than 90 days after the Commission has established and published notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule to which such children's product is subject.

(B) TIME LINE FOR ACCREDITATION.—

(i) LEAD PAINT.—Not later than 30 days after August 14, 2008, the Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with part 1303 of title 16, Code of Federal Regulations.

(ii) FULL-SIZE CRIBS; NON FULL-SIZE CRIBS; PACIFIERS.—Not later than 60 days after August 14, 2008, the Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with parts 1508, 1509, and 1511 of such title.

(iii) SMALL PARTS.—Not later than 90 days after August 14, 2008, the Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with part 1501 of such title.

(iv) CHILDREN'S METAL JEWELRY.—Not later than 120 days after August 14, 2008, the Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with the requirements of section 1278a(a)(2) of this title with respect to children's metal jewelry.

(v) BABY BOUNCERS, WALKERS, AND JUMPERS.—Not later than 210 days after August 14, 2008, the Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with parts 1500.18(a)(6) and 1500.86(a) of such title.[1]

(vi) ALL OTHER CHILDREN'S PRODUCT SAFETY RULES.—The Commission shall publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with other children's product safety rules at the earliest practicable date, but in no case later than 10 months after August 14, 2008, or, in the case of children's product safety rules established or revised 1 year or more after such date, not later than 90 days before such rules or revisions take effect.

(C) ACCREDITATION.—Accreditation of third party conformity assessment bodies pursuant to the requirements established under subparagraph (B) may be conducted either by the Commission or by an independent accreditation organization designated by the Commission.

(D) PERIODIC REVIEW.—The Commission shall periodically review and revise the accreditation requirements established under subparagraph (B) to ensure that the requirements assure the highest conformity assessment body quality that is feasible.

(E) PUBLICATION OF ACCREDITED ENTITIES.—The Commission shall maintain on its Internet website an up-to-date list of entities that have been accredited to assess conformity with children's product safety rules in accordance with the requirements published by the Commission under this paragraph.

(F) EXTENSION.—If the Commission determines that an insufficient number of third party conformity assessment bodies have been accredited to permit certification for a children's product safety rule under the accelerated schedule required by this paragraph, the Commission may extend the deadline for certification to such rule by not more than 60 days.

(G) RULEMAKING.—Until the date that is 3 years after August 14, 2008, Commission proceedings under this paragraph shall be exempt from the requirements of sections 553 and 601 through 612 of title 5.

(4) In the case of a consumer product for which there is more than one manufacturer or more than one private labeler, the Commission may by rule designate one or more of such manufacturers or one or more of such private labelers (as the case may be) as the persons who shall issue the certificate required under paragraph (1), (2), or (3), and may exempt all other manufacturers of such product or all other private labelers of the product (as the case may be) from the requirement under paragraph (1), (2), or (3) to issue a certificate with respect to such product.

(5)(A) Effective 1 year after August 14, 2008, the manufacturer of a children's product shall place permanent, distinguishing marks on the product and its packaging, to the extent practicable, that will enable—

(i) the manufacturer to ascertain the location and date of production of the product, cohort information (including the batch, run number, or other identifying characteristic), and any other information determined by the manufacturer to facilitate ascertaining the specific source of the product by reference to those marks; and

(ii) the ultimate purchaser to ascertain the manufacturer or private labeler, location and date of production of the product, and cohort information (including the batch, run number, or other identifying characteristic).

(B) The Commission may, by regulation, exclude a specific product or class of products from the requirements in subparagraph (A) if the Commission determines that it is not prac-

[1] So in original. Such title refers to title 16, Code of Federal Regulations.

ticable for such product or class of products to bear the marks required by such subparagraph. The Commission may establish alternative requirements for any product or class of products excluded under the preceding sentence consistent with the purposes described in clauses (i) and (ii) of subparagraph (A).

(b) Rules to establish reasonable testing programs

The Commission may by rule prescribe reasonable testing programs for any product which is subject to a consumer product safety rule under this chapter, or a similar rule, regulation, standard, or ban under any other Act enforced by the Commission, and for which a certificate is required under subsection (a). Any test or testing program on the basis of which a certificate is issued under subsection (a) may, at the option of the person required to certify the product, be conducted by an independent third party qualified to perform such tests, unless the Commission, by rule, requires testing by an independent third party for a particular rule, regulation, standard, or ban, or for a particular class of products.

(c) Form and contents of labels

The Commission may by rule require the use and prescribe the form and content of labels which contain the following information (or that portion of it specified in the rule)—

(1) The date and place of manufacture of any consumer product.

(2) The cohort information (including the batch, run number, or other identifying characteristic) of the product.

(3) A suitable identification of the manufacturer of the consumer product, unless the product bears a private label in which case it shall identify the private labeler and shall also contain a code mark which will permit the seller of such product to identify the manufacturer thereof to the purchaser upon his request.

(4) In the case of a consumer product subject to a consumer product safety rule, a certification that the product meets all applicable consumer product safety standards and a specification of the standards which are applicable.

Such labels, where practicable, may be required by the Commission to be permanently marked on or affixed to any such consumer product. The Commission may, in appropriate cases, permit information required under paragraphs (1) and (2) of this subsection to be coded.

(d) Additional regulations for third party testing

(1) Audit

Not later than 10 months after August 14, 2008, the Commission shall by regulation establish requirements for the periodic audit of third party conformity assessment bodies as a condition for the continuing accreditation of such conformity assessment bodies under subsection (a)(3)(C).

(2) Compliance; continuing testing

Not later than 15 months after August 14, 2008, the Commission shall by regulation—

(A) initiate a program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements of subsection (a); and

(B) establish protocols and standards—

(i) for ensuring that a children's product tested for compliance with an applicable children's product safety rule is subject to testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts;

(ii) for the testing of representative samples to ensure continued compliance;

(iii) for verifying that a children's product tested by a conformity assessment body complies with applicable children's product safety rules; and

(iv) for safeguarding against the exercise of undue influence on a third party conformity assessment body by a manufacturer or private labeler.

(3) Reducing third party testing burdens

(A) Assessment

Not later than 60 days after August 12, 2011, the Commission shall seek public comment on opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation. The request for public comment shall include the following:

(i) The extent to which the use of materials subject to regulations of another government agency that requires third party testing of those materials may provide sufficient assurance of conformity with an applicable consumer product safety rule, ban, standard, or regulation without further third party testing.

(ii) The extent to which modification of the certification requirements may have the effect of reducing redundant third party testing by or on behalf of 2 or more importers of a product that is substantially similar or identical in all material respects.

(iii) The extent to which products with a substantial number of different components subject to third party testing may be evaluated to show compliance with an applicable rule, ban, standard, or regulation by third party testing of a subset of such components selected by a third party conformity assessment body.

(iv) The extent to which manufacturers with a substantial number of substantially similar products subject to third party testing may reasonably make use of sampling procedures that reduce the overall test burden without compromising the benefits of third party testing.

(v) The extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer product safety rules, bans, standards, or regulations applicable under this chapter.

(vi) The extent to which technology, other than the technology already approved by the Commission, exists for third party conformity assessment bodies to test

or to screen for testing consumer products subject to a third party testing requirement.

(vii) Other techniques for lowering the cost of third party testing consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.

(B) Regulations

Following the public comment period described in subparagraph (A), but not later than 1 year after August 12, 2011, the Commission shall review the public comments and may prescribe new or revised third party testing regulations if it determines that such regulations will reduce third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.

(C) Report

If the Commission determines that it lacks authority to implement an opportunity for reducing the costs of third-party testing consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations, it shall transmit a report to Congress reviewing those opportunities, along with any recommendations for any legislation to permit such implementation.

(4) Special rules for small batch manufacturers

(A) Special consideration; exemption

(i) Consideration; alternative requirements

Subject to subparagraph (C), in implementing third party testing requirements under this section, the Commission shall take into consideration any economic, administrative, or other limits on the ability of small batch manufacturers to comply with such requirements and shall, after notice and a hearing, provide alternative testing requirements for covered products manufactured by small batch manufacturers in lieu of those required under subsection (a) or (b). Any such alternative requirements shall provide for reasonable methods to assure compliance with any applicable consumer product safety rule, ban, standard, or regulation. The Commission may allow such alternative testing requirements for small batch manufacturers with respect to a specific product or product class or with respect to a specific safety rule, ban, standard, or regulation, or portion thereof.

(ii) Exemption

If the Commission determines that no alternative testing requirement is available or economically practicable, it shall exempt small batch manufacturers from third party testing requirements under subsections (a) and (b).

(iii) Certification

In lieu of or as part of any alternative testing requirements provided under clause (i), the Commission may allow certification of a product to an applicable consumer product safety rule, ban, standard, or regulation, or portion thereof, based on documentation that the product complies with another national or international governmental standard or safety requirement that the Commission determines is the same or more stringent than the consumer product safety rule, ban, standard, or regulation, or portion thereof. Any such certification shall only be allowed to the extent of the equivalency with a consumer product safety rule, ban, standard, or regulation and not to any other part of the consumer product safety rule, ban, standard, or regulation.

(iv) Restriction

Except as provided in subparagraph (C), and except where the Commission determines that the manufacturer does not meet the definition of a small batch manufacturer, for any small batch manufacturer registered pursuant to subparagraph (B), the Commission may not require third party testing of a covered product by a third party conformity assessment body until the Commission has provided either an alternative testing requirement or an exemption in accordance with clause (i) or (ii), respectively.

(B) Registration

Any small batch manufacturer that utilizes alternative requirements or an exemption under this paragraph shall register with the Commission prior to using such alternative requirements or exemptions pursuant to any guidelines issued by the Commission to carry out this requirement.

(C) Limitation

The Commission shall not provide or permit to continue in effect any alternative requirements or exemption from third party testing requirements under this paragraph where it determines, based on notice and a hearing, that full compliance with subsection (a) or (b) is reasonably necessary to protect public health or safety. The Commission shall not provide any alternative requirements or exemption for—

(i) any of the third party testing requirements described in clauses (i) through (v) of subsection (a)(3)(B); or

(ii) durable infant or toddler products, as defined in section 2056a(f) of this title.

(D) Subsequent manufacturer

Nothing in this paragraph shall be construed to affect third party testing or any other requirements with respect to a subsequent manufacturer or other entity that uses components provided by one or more small batch manufacturers.

(E) Definitions

For purposes of this paragraph—

(i) the term ''covered product'' means a consumer product manufactured by a small batch manufacturer where no more than 7,500 units of the same product were manufactured in the previous calendar year; and

(ii) the term ''small batch manufacturer'' means a manufacturer that had no more than $1,000,000 in total gross revenue from sales of all consumer products in the previous calendar year. The dollar amount contained in this paragraph shall be adjusted annually by the percentage increase in the Consumer Price Index for all urban consumers published by the Department of Labor.

For purposes of determining the total gross revenue for all sales of all consumer products of a manufacturer under this subparagraph, such total gross revenue shall be considered to include all gross revenue from all sales of all consumer products of each entity that controls, is controlled by, or is under common control with such manufacturer. The Commission shall take steps to ensure that all relevant business affiliations are considered in determining whether or not a manufacturer meets this definition.

(5) Exclusion from third party testing

(A) Certain printed materials

(i) In general

The third party testing requirements established under subsection (a) shall not apply to ordinary books or ordinary paper-based printed materials.

(ii) Definitions

(I) Ordinary book

The term ''ordinary book'' means a book printed on paper or cardboard, printed with inks or toners, and bound and finished using a conventional method, and that is intended to be read or has educational value. Such term does not include books with inherent play value, books designed or intended for a child 3 years of age or younger, and does not include any toy or other article that is not a book that is sold or packaged with an ordinary book.

(II) Ordinary paper-based printed materials

The term ''ordinary paper-based printed materials'' means materials printed on paper or cardboard, such as magazines, posters, greeting cards, and similar products, that are printed with inks or toners and bound and finished using a conventional method.

(III) Exclusions

Such terms do not include books or printed materials that contain components that are printed on material other than paper or cardboard or contain nonpaper-based components such as metal or plastic parts or accessories that are not part of the binding and finishing materials used in a conventional method.

(B) Metal component parts of bicycles

The third party testing requirements established under subsection (a) shall not apply to metal component parts of bicycles with respect to compliance with the lead content limits in place pursuant to section 1278a(b)(6) of this title.

(e) Withdrawal of accreditation

(1) In general

The Commission may withdraw its accreditation or its acceptance of the accreditation of a third party conformity assessment body accredited under this section if the Commission finds, after notice and investigation, that—

(A) a manufacturer, private labeler, or governmental entity has exerted undue influence on such conformity assessment body or otherwise interfered with or compromised the integrity of the testing process with respect to the certification of a children's product under this section; or

(B) such conformity assessment body failed to comply with an applicable protocol, standard, or requirement established by the Commission under subsection (d).

(2) Procedure

In any proceeding to withdraw the accreditation of a conformity assessment body, the Commission—

(A) shall consider the gravity of the conformity assessment body's action or failure to act, including—

(i) whether the action or failure to act resulted in injury, death, or the risk of injury or death;

(ii) whether the action or failure to act constitutes an isolated incident or represents a pattern or practice; and

(iii) whether and when the conformity assessment body initiated remedial action; and

(B) may—

(i) withdraw its acceptance of the accreditation of the conformity assessment body on a permanent or temporary basis; and

(ii) establish requirements for reaccreditation of the conformity assessment body.

(3) Failure to cooperate

The Commission may suspend the accreditation of a conformity assessment body if it fails to cooperate with the Commission in an investigation under this section.

(f) Definitions

In this section:

(1) Children's product safety rule

The term ''children's product safety rule'' means a consumer product safety rule under this chapter or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance.

(2) Third party conformity assessment body

(A) In general

The term ''third party conformity assessment body'' means a conformity assessment body that, except as provided in subparagraph (D), is not owned, managed, or controlled by the manufacturer or private label-

er of a product assessed by such conformity assessment body.

(B) Governmental participation

Such term may include an entity that is owned or controlled in whole or in part by a government if—

(i) to the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;

(ii) the entity's testing results are not subject to undue influence by any other person, including another governmental entity;

(iii) the entity is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited under this section;

(iv) the entity's testing results are accorded no greater weight by other governmental authorities than those of other third party conformity assessment bodies accredited under this section; and

(v) the entity does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the entity's conformity assessments.

(C) Testing and certification of art materials and products

A certifying organization (as defined in appendix A to section 1500.14(b)(8) of title 16, Code of Federal Regulations (or any successor regulation or ruling)) meets the requirements of subparagraph (A) with respect to the certification of art material and art products required under this section or by regulations prescribed under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.).

(D) Firewalled conformity assessment bodies

Upon request, the Commission may accredit a conformity assessment body that is owned, managed, or controlled by a manufacturer or private labeler as a third party conformity assessment body if the Commission by order finds that—

(i) accreditation of the conformity assessment body would provide equal or greater consumer safety protection than the manufacturer's or private labeler's use of an independent third party conformity assessment body; and

(ii) the conformity assessment body has established procedures to ensure that—

(I) its test results are protected from undue influence by the manufacturer, private labeler or other interested party;

(II) the Commission is notified immediately of any attempt by the manufacturer, private labeler or other interested party to hide or exert undue influence over test results; and

(III) allegations of undue influence may be reported confidentially to the Commission.

(g) Requirements for certificates

(1) Identification of issuer and conformity assessment body

Every certificate required under this section shall identify the manufacturer or private labeler issuing the certificate and any third party conformity assessment body on whose testing the certificate depends. The certificate shall include, at a minimum, the date and place of manufacture, the date and place where the product was tested, each party's name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of test results.

(2) English language

Every certificate required under this section shall be legible and all content required by this section shall be in the English language. A certificate may also contain the same content in any other language.

(3) Availability of certificates

Every certificate required under this section shall accompany the applicable product or shipment of products covered by the same certificate and a copy of the certificate shall be furnished to each distributor or retailer of the product. Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy of the certificate to the Commission.

(4) Electronic filing of certificates for imported products

In consultation with the Commissioner of Customs, the Commission may, by rule, provide for the electronic filing of certificates under this section up to 24 hours before arrival of an imported product. Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy to the Commission and to the Commissioner of Customs.

(h) Rule of construction

Compliance of any children's product with third party testing and certification or general conformity certification requirements under this section shall not be construed to exempt such children's product from any requirement that such product actually be in conformity with all applicable rules, regulation, standards, or ban under any Act enforced by the Commission.

(i) Requirement for advertisements

No advertisement for a consumer product or label or packaging of such product may contain a reference to a consumer product safety rule or a voluntary consumer product safety standard unless such product conforms with the applicable safety requirements of such rule or standard.

(Pub. L. 92–573, § 14, Oct. 27, 1972, 86 Stat. 1220; Pub. L. 110–314, title I, §§ 102(a)(1)(A), (2), (3), (b), (d), 103, Aug. 14, 2008, 122 Stat. 3022, 3024, 3027, 3028; Pub. L. 112–28, §§ 2(a), 6, 10(a), Aug. 12, 2011, 125 Stat. 276, 281, 283.)

REFERENCES IN TEXT

The Federal Hazardous Substances Act, referred to in subsec. (f)(2)(C), is Pub. L. 86–613, July 12, 1960, 74 Stat.

372, which is classified generally to chapter 30 (§ 1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

AMENDMENTS

2011—Subsec. (a)(5). Pub. L. 112–28, § 6, designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), and added subpar. (B).

Subsec. (d). Pub. L. 112–28, § 10(a), redesignated subsec. (d), relating to requirement for advertisements, as (i).

Subsec. (d)(2)(B)(ii). Pub. L. 112–28, § 2(a)(1), substituted ''representative'' for ''random''.

Subsec. (d)(3) to (5). Pub. L. 112–28, § 2(a)(2), added pars. (3) to (5).

Subsec. (i). Pub. L. 112–28, § 10(a), redesignated subsec. (d), relating to requirement for advertisements, as (i).

2008—Subsec. (a)(1). Pub. L. 110–314, § 102(a)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Every manufacturer of a product which is subject to a consumer product safety standard under this chapter and which is distributed in commerce (and the private labeler of such product if it bears a private label) shall issue a certificate which shall certify that such product conforms to all applicable consumer product safety standards, and shall specify any standard which is applicable. Such certificate shall accompany the product or shall otherwise be furnished to any distributor or retailer to whom the product is delivered. Any certificate under this subsection shall be based on a test of each product or upon a reasonable testing program; shall state the name of the manufacturer or private labeler issuing the certificate; and shall include the date and place of manufacture.''

Subsec. (a)(2), (3). Pub. L. 110–314, § 102(a)(2), which directed amendment of par. (2) of this section by adding pars. (2) and (3), was executed by adding pars. (2) and (3) to subsec. (a) of this section, to reflect the probable intent of Congress. Former par. (2) redesignated (4).

Subsec. (a)(4). Pub. L. 110–314, § 102(a)(3), substituted ''required under paragraph (1), (2), or (3)'' for ''required by paragraph (1) of this subsection'' and ''requirement under paragraph (1), (2), or (3)'' for ''requirement under paragraph (1)''.

Pub. L. 110–314, § 102(a)(2), which directed amendment of par. (2) of this section by redesignating par. (2) as (4), was executed to subsec. (a) of this section, to reflect the probable intent of Congress.

Subsec. (a)(5). Pub. L. 110–314, § 103(a), added par. (5).

Subsec. (b). Pub. L. 110–314, § 102(d), substituted ''any product which is subject to a consumer product safety rule under this chapter, or a similar rule, regulation, standard, or ban under any other Act enforced by the Commission,'' for ''consumer products which are subject to consumer product safety standards under this chapter'' and '', unless the Commission, by rule, requires testing by an independent third party for a particular rule, regulation, standard, or ban, or for a particular class of products.'' for ''or testing programs.''

Subsec. (c)(2) to (4). Pub. L. 110–314, § 103(b), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d). Pub. L. 110–314, § 103(c), added subsec (d) relating to requirement for advertisements.

Pub. L. 110–314, § 102(b), added subsec. (d) relating to additional regulations for third party testing.

Subsecs. (e) to (h). Pub. L. 110–314, § 102(b), added subsecs. (e) to (h).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–314, title I, § 102(a)(1)(B), Aug. 14, 2008, 122 Stat. 3022, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect 90 days after the date of enactment of this Act [Aug. 14, 2008].''

Amendment by section 103(c) of Pub. L. 110–314 effective on the date that is 60 days after Aug. 14, 2008, see section 239(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

CPSC CONSIDERATION OF EXISTING REQUIREMENTS

Pub. L. 110–314, title I, § 102(c), Aug. 14, 2008, 122 Stat. 3027, provided that: ''In establishing standards for accreditation of a third party conformity assessment body under section 14(a)(3) of the Consumer Product Safety Act [15 U.S.C. 2063(a)(3)], as added by subsection (a), the [Consumer Product Safety] Commission may consider standards and protocols for accreditation of such conformity assessment bodies by independent accreditation organizations that are in effect on the date of enactment of this Act [Aug. 14, 2008], but shall ensure that the protocols, standards, and requirements prescribed under such section 14(a)(3) incorporate, as the standard for accreditation, the most current scientific and technological standards and techniques available.''

§ 2064. Substantial product hazards

(a) "Substantial product hazard" defined

For purposes of this section, the term ''substantial product hazard'' means—

(1) a failure to comply with an applicable consumer product safety rule under this chapter or a similar rule, regulation, standard, or ban under any other Act enforced by the Commission which creates a substantial risk of injury to the public, or

(2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

(b) Noncompliance with applicable consumer product safety rules; product defects; notice to Commission by manufacturer, distributor, or retailer

Every manufacturer of a consumer product, or other product or substance over which the Commission has jurisdiction under any other Act enforced by the Commission (other than motor vehicle equipment as defined in section 30102(a)(7) of title 49), distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product—

(1) fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 2058 of this title;

(2) fails to comply with any other rule, regulation, standard, or ban under this chapter or any other Act enforced by the Commission;

(3) contains a defect which could create a substantial product hazard described in subsection (a)(2); or

(4) creates an unreasonable risk of serious injury or death,

shall immediately inform the Commission of such failure to comply, of such defect, or of such risk, unless such manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such defect, failure to comply, or such risk. A report provided under paragraph (2) may not be used as the basis for criminal prosecution of the reporting person under section 1264 of this title, except for offenses which require a showing of intent to defraud or mislead.

(c) Notice of defect or failure to comply; mail notice

(1) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) of this section) that a product distributed in commerce presents a substantial product hazard and that notification is required in order to adequately protect the public from such substantial product hazard, or if the Commission, after notifying the manufacturer, determines a product to be an imminently hazardous consumer product and has filed an action under section 2061 of this title, the Commission may order the manufacturer or any distributor or retailer of the product to take any one or more of the following actions:

(A) To cease distribution of the product.

(B) To notify all persons that transport, store, distribute, or otherwise handle the product, or to which the product has been transported, sold, distributed, or otherwise handled, to cease immediately distribution of the product.

(C) To notify appropriate State and local public health officials.

(D) To give public notice of the defect or failure to comply, including posting clear and conspicuous notice on its Internet website, providing notice to any third party Internet website on which such manufacturer, retailer, distributor, or licensor has placed the product for sale, and announcements in languages other than English and on radio and television where the Commission determines that a substantial number of consumers to whom the recall is directed may not be reached by other notice.

(E) To mail notice to each person who is a manufacturer, distributor, or retailer of such product.

(F) To mail notice to every person to whom the person required to give notice knows such product was delivered or sold.

Any such order shall specify the form and content of any notice required to be given under such order.

(2) The Commission may require a notice described in paragraph (1) to be distributed in a language other than English if the Commission determines that doing so is necessary to adequately protect the public.

(3) If a district court determines, in an action filed under section 2061 of this title, that the product that is the subject of such action is not an imminently hazardous consumer product, the Commission shall rescind any order issued under this subsection with respect to such product.

(d) Repair; replacement; refunds; action plan

(1) If the Commission determines (after affording interested parties, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f)) that a product distributed in commerce presents a substantial product hazard and that action under this subsection is in the public interest, it may order the manufacturer or any distributor or retailer of such product to provide the notice required by subsection (c) and to take any one or more of the following actions it determines to be in the public interest:

(A) To bring such product into conformity with the requirements of the applicable rule, regulation, standard, or ban or to repair the defect in such product.

(B) To replace such product with a like or equivalent product which complies with the applicable rule, regulation, standard, or ban or which does not contain the defect.

(C) To refund the purchase price of such product (less a reasonable allowance for use, if such product has been in the possession of a consumer for one year or more (i) at the time of public notice under subsection (c), or (ii) at the time the consumer receives actual notice of the defect or noncompliance, whichever first occurs).

(2) An order under this subsection shall also require the person to whom it applies to submit a plan, for approval by the Commission, for taking action under whichever of the preceding subparagraphs under which such person has been ordered to act. The Commission shall specify in the order the persons to whom refunds must be made if the Commission orders the action described in subparagraph (C)..[1] An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), or from doing any combination of such actions, the product with respect to which the order was issued.

(3)(A) If the Commission approves an action plan, it shall indicate its approval in writing.

(B) If the Commission finds that an approved action plan is not effective or appropriate under the circumstances, or that the manufacturer, retailer, or distributor is not executing an approved action plan effectively, the Commission may, by order, amend, or require amendment of, the action plan. In determining whether an approved plan is effective or appropriate under the circumstances, the Commission shall consider whether a repair or replacement changes the intended functionality of the product.

(C) If the Commission determines, after notice and opportunity for comment, that a manufacturer, retailer, or distributor has failed to comply substantially with its obligations under its action plan, the Commission may revoke its approval of the action plan. The manufacturer, retailer, or distributor to which the action plan applies may not distribute in commerce the product to which the action plan relates after receipt of notice of a revocation of the action plan.

(e) Reimbursement

(1) No charge shall be made to any person (other than a manufacturer, distributor, or retailer) who avails himself of any remedy provided under an order issued under subsection (d), and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or retailer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such remedy.

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[1] So in original. Probably should be ''paragraph (1)(C).''

(2) An order issued under subsection (c) or (d) with respect to a product may require any person who is a manufacturer, distributor, or retailer of the product to reimburse any other person who is a manufacturer, distributor, or retailer of such product for such other person's expenses in connection with carrying out the order, if the Commission determines such reimbursement to be in the public interest.

(f) Hearing

(1) Except as provided in paragraph (2), an order under subsection (c) or (d) may be issued only after an opportunity for a hearing in accordance with section 554 of title 5 except that, if the Commission determines that any person who wishes to participate in such hearing is a part of a class of participants who share an identity of interest, the Commission may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Commission if such class fails to designate such a representative). Any settlement offer which is submitted to the presiding officer at a hearing under this subsection shall be transmitted by the officer to the Commission for its consideration unless the settlement offer is clearly frivolous or duplicative of offers previously made.

(2) The requirement for a hearing in paragraph (1) shall not apply to an order issued under subsection (c) or (d) relating to an imminently hazardous consumer product with regard to which the Commission has filed an action under section 2061 of this title.

(g) Preliminary injunction

(1) If the Commission has initiated a proceeding under this section for the issuance of an order under subsection (d) with respect to a product which the Commission has reason to believe presents a substantial product hazard, the Commission (without regard to section 2076(b)(7) of this title) or the Attorney General may, in accordance with 2061(d)(1)[2] of this title, apply to a district court of the United States for the issuance of a preliminary injunction to restrain the distribution in commerce of such product pending the completion of such proceeding. If such a preliminary injunction has been issued, the Commission (or the Attorney General if the preliminary injunction was issued upon an application of the Attorney General) may apply to the issuing court for extensions of such preliminary injunction.

(2) Any preliminary injunction, and any extension of a preliminary injunction, issued under this subsection with respect to a product shall be in effect for such period as the issuing court prescribes not to exceed a period which extends beyond the thirtieth day from the date of the issuance of the preliminary injunction (or, in the case of a preliminary injunction which has been extended, the date of its extension) or the date of the completion or termination of the proceeding under this section respecting such product, whichever date occurs first.

(3) The amount in controversy requirement of section 1331 of title 28 does not apply with respect to the jurisdiction of a district court of the United States to issue or exend[3] a preliminary injunction under this subsection.

(h) Cost-benefit analysis of notification or other action not required

Nothing in this section shall be construed to require the Commission, in determining that a product distributed in commerce presents a substantial product hazard and that notification or other action under this section should be taken, to prepare a comparison of the costs that would be incurred in providing notification or taking other action under this section with the benefits from such notification or action.

(i) Requirements for recall notices

(1) Guidelines

Not later than 180 days after August 14, 2008, the Commission shall, by rule, establish guidelines setting forth a uniform class of information to be included in any notice required under an order under subsection (c) or (d) of this section or under section 2061 of this title. Such guidelines shall include any information that the Commission determines would be helpful to consumers in—

(A) identifying the specific product that is subject to such an order;

(B) understanding the hazard that has been identified with such product (including information regarding incidents or injuries known to have occurred involving such product); and

(C) understanding what remedy, if any, is available to a consumer who has purchased the product.

(2) Content

Except to the extent that the Commission determines with respect to a particular product that one or more of the following items is unnecessary or inappropriate under the circumstances, the notice shall include the following:

(A) description of the product, including—

(i) the model number or stock keeping unit (SKU) number of the product;

(ii) the names by which the product is commonly known; and

(iii) a photograph of the product.

(B) A description of the action being taken with respect to the product.

(C) The number of units of the product with respect to which the action is being taken.

(D) A description of the substantial product hazard and the reasons for the action.

(E) An identification of the manufacturers and significant retailers of the product.

(F) The dates between which the product was manufactured and sold.

(G) The number and a description of any injuries or deaths associated with the product, the ages of any individuals injured or killed, and the dates on which the Commission received information about such injuries or deaths.

(H) A description of—

(i) any remedy available to a consumer;

[2] So in original. Probably should be preceded by ''section''.

[3] So in original. Probably should be ''extend''.

(ii) any action a consumer must take to obtain a remedy; and

(iii) any information a consumer needs in order to obtain a remedy or information about a remedy, such as mailing addresses, telephone numbers, fax numbers, and email addresses.

(I) Other information the Commission deems appropriate.

(j) Substantial product hazard list

(1) In general

The Commission may specify, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence shall be deemed a substantial product hazard under subsection (a)(2), if the Commission determines that—

(A) such characteristics are readily observable and have been addressed by voluntary standards; and

(B) such standards have been effective in reducing the risk of injury from consumer products and that there is substantial compliance with such standards.

(2) Judicial review

Not later than 60 days after promulgation of a rule under paragraph (1), any person adversely affected by such rule may file a petition for review under the procedures set forth in section 2060 of this title.

(Pub. L. 92–573, §15, Oct. 27, 1972, 86 Stat. 1221; Pub. L. 94–284, §12(a), May 11, 1976, 90 Stat. 508; Pub. L. 97–35, title XII, §1211(h)(4), Aug. 13, 1981, 95 Stat. 723; Pub. L. 97–414, §9(j)(3), (m), Jan. 4, 1983, 96 Stat. 2064, 2065; Pub. L. 100–418, title I, §1214(d), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 101–608, title I, §§111(a)(2), 112(a), 113, Nov. 16, 1990, 104 Stat. 3114, 3115, 3117; Pub. L. 110–314, title II, §§214, 223(a), Aug. 14, 2008, 122 Stat. 3052, 3068.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (d)(2), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–314, §214(a)(1), inserted ''under this chapter or a similar rule, regulation, standard, or ban under any other Act enforced by the Commission'' after ''consumer product safety rule''.

Subsec. (b). Pub. L. 110–314, §214(a)(2)(B)–(D), added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and inserted ''A report provided under paragraph (2) may not be used as the basis for criminal prosecution of the reporting person under section 1264 of this title, except for offenses which require a showing of intent to defraud or mislead.'' at end of concluding provisions.

Pub. L. 110–314, §214(a)(2)(A), substituted ''consumer product, or other product or substance over which the Commission has jurisdiction under any other Act enforced by the Commission (other than motor vehicle equipment as defined in section 30102(a)(7) of title 49), distributed in commerce,'' for ''consumer product distributed in commerce,'' in introductory provisions.

Subsec. (c). Pub. L. 110–314, §214(a)(3)(A), (C), (D), designated existing provisions as par. (1), added subpars. (A) to (C), and redesignated former pars. (1) to (3) as subpars. (D) to (F), respectively.

Subsec. (c)(1). Pub. L. 110–314, §214(a)(3)(B), inserted ''or if the Commission, after notifying the manufacturer, determines a product to be an imminently hazardous consumer product and has filed an action under section 2061 of this title,'' after ''such substantial product hazard,'' in introductory provisions.

Subsec. (c)(1)(D). Pub. L. 110–314, §214(a)(3)(E), substituted ''comply, including posting clear and conspicuous notice on its Internet website, providing notice to any third party Internet website on which such manufacturer, retailer, distributor, or licensor has placed the product for sale, and announcements in languages other than English and on radio and television where the Commission determines that a substantial number of consumers to whom the recall is directed may not be reached by other notice.'' for ''comply.''

Subsec. (c)(2), (3). Pub. L. 110–314, §214(a)(3)(F), added pars. (2) and (3).

Subsec. (d). Pub. L. 110–314, §214(b)(1), (4), inserted par. (1) designation before ''If the Commission'' and redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively.

Subsec. (d)(1). Pub. L. 110–314, §214(b)(2), (3), in introductory provisions inserted ''to provide the notice required by subsection (c) and'' after ''such product'' and substituted ''any one or more of the following actions it determines to be in the public interest:'' for ''whichever of the following actions the person to whom the order is directed elects:''.

Subsec. (d)(1)(A), (B). Pub. L. 110–314, §214(b)(5), substituted ''rule, regulation, standard, or ban'' for ''consumer product safety rule''.

Subsec. (d)(1)(C). Pub. L. 110–314, §214(b)(6), (7), substituted ''more (i)'' for ''more (A)'' and ''or (ii)'' for ''or (B)''.

Subsec. (d)(2). Pub. L. 110–314, §214(b)(13), which directed substitution of ''described in paragraph (1)(C).'' for ''described in paragraph (3).'', could not be executed because ''paragraph (3)'' did not appear subsequent to amendment by Pub. L. 110–314, §214(b)(11). See below.

Pub. L. 110–314, §214(b)(12), struck out ''If an order under this subsection is directed to more than one person, the Commission shall specify which person has the election under this subsection'' before ''. An order under this subsection may prohibit''.

Pub. L. 110–314, §214(b)(11), substituted ''if the Commission orders the action described in subparagraph (C)'' for ''if the person to whom the order is directed elects to take the action described in paragraph (3)''.

Pub. L. 110–314, §214(b)(9), (10), substituted ''for approval by the Commission,'' for ''satisfactory to the Commission,'' and ''subparagraphs under which such person has been ordered to act'' for ''paragraphs of this subsection under which such person has elected to act''.

Pub. L. 110–314, §214(b)(8), designated concluding provisions of subsec. (d) as par. (2) and substituted ''shall also require'' for ''may also require''. Former par. (2) redesignated (1)(B).

Subsec. (d)(3). Pub. L. 110–314, §214(b)(14), added par. (3). Former par. (3) redesignated (1)(C).

Subsec. (f). Pub. L. 110–314, §214(a)(4), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), an order'' for ''An order'', and added par. (2).

Subsec. (i). Pub. L. 110–314, §214(c), added subsec. (i).

Subsec. (j). Pub. L. 110–314, §223(a), added subsec. (j).

1990—Subsec. (b). Pub. L. 101–608, §112(a)(4), (5), in concluding provisions substituted ''comply, of such defect, or of such risk'' for ''comply or of such defect'' and ''defect, failure to comply, or such risk'' for ''defect or failure to comply''.

Subsec. (b)(1). Pub. L. 101–608, §112(a)(1), inserted reference to voluntary consumer product safety standard upon which Commission has relied under section 2058 of this title.

Subsec. (b)(3). Pub. L. 101–608, §112(a)(2), (3), added par. (3).

Subsec. (f). Pub. L. 101–608, §113, inserted at end ''Any settlement offer which is submitted to the presiding officer at a hearing under this subsection shall be trans-

mitted by the officer to the Commission for its consideration unless the settlement offer is clearly frivolous or duplicative of offers previously made.''

Subsec. (h). Pub. L. 101–608, §111(a)(2), added subsec. (h).

1988—Subsec. (d). Pub. L. 100–418 substituted ''general note 2 of the Harmonized Tariff Schedule of the United States'' for ''general headnote 2 to the Tariff Schedules of the United States'' in last sentence.

1983—Subsec. (g)(1). Pub. L. 97–414, §9(m), amended, in part, Pub. L. 97–35, §1211(h)(4). See 1981 Amendment note below.

Pub. L. 97–414, §9(j)(3), substituted ''2061(d)(1)'' for ''section 2061(c)(1)''.

1981—Subsec. (g)(1). Pub. L. 97–35, §1211(h)(4), substituted ''section 2061(c)(1)'' for ''section 2061(e)(1)''.

Pub. L. 97–35, §1211(h)(4), which directed insertion of '', Science and Transportation'' after ''on Commerce'' and could not be executed because ''on Commerce'' did not appear in text, was amended by Pub. L. 97–414, §9(m), so as to strike out such directory language.

1976—Subsec. (d). Pub. L. 94–284, §12(a)(1), provided, in provision following par. (3), that an order issued under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States, the product for which the order was issued.

Subsec. (g). Pub. L. 94–284, §12(a)(2), added subsec. (g).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 214(a)(2) of Pub. L. 110–314 effective on the date that is 60 days after Aug. 14, 2008, see section 239(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

REPORTING REQUIREMENTS

Pub. L. 103–267, title I, §102, June 16, 1994, 108 Stat. 726, provided that:

''(a) REPORTS TO CONSUMER PRODUCT SAFETY COMMISSION.—

''(1) REQUIREMENT TO REPORT.—Each manufacturer, distributor, retailer, and importer of a marble, small ball, or latex balloon, or a toy or game that contains a marble, small ball, latex balloon, or other small part, shall report to the Commission any information obtained by such manufacturer, distributor, retailer, or importer which reasonably supports the conclusion that—

''(A) an incident occurred in which a child (regardless of age) choked on such a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in such toy or game; and

''(B) as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.

''(2) TREATMENT UNDER CPSA.—For purposes of section 19(a)(3) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(3)), the requirement to report information under this subsection is deemed to be a requirement under such Act [15 U.S.C. 2051 et seq.].

''(3) EFFECT ON LIABILITY.—A report by a manufacturer, distributor, retailer, or importer under paragraph (1) shall not be interpreted, for any purpose, as an admission of liability or of the truth of the information contained in the report.

''(b) CONFIDENTIALITY PROTECTIONS.—The confidentiality protections of section 6(b) of the Consumer Product Safety Act (15 U.S.C. 2055(b)) apply to any information reported to the Commission under subsection (a) of this section. For purposes of section 6(b)(5) of such Act, information so reported shall be treated as information submitted pursuant to section 15(b) of such Act [15 U.S.C. 2064(b)] respecting a consumer product.''

§ 2065. Inspection and recordkeeping

(a) Inspection

For purposes of implementing this chapter, or rules or orders prescribed under this chapter, officers or employees duly designated by the Commission, upon presenting appropriate credentials and a written notice from the Commission to the owner, operator, or agent in charge, are authorized—

(1) to enter, at reasonable times, (A) any factory, warehouse, or establishment in which consumer products are manufactured or held, in connection with distribution in commerce, (B) any firewalled conformity assessment bodies accredited under section 2063(f)(2)(D) of this title, or (C) any conveyance being used to transport consumer products in connection with distribution in commerce; and

(2) to inspect, at reasonable times and in a reasonable manner such conveyance or those areas of such factory, firewalled conformity assessment body, warehouse, or establishment where such products are manufactured, held, or transported and which may relate to the safety of such products. Each such inspection shall be commenced and completed with reasonable promptness.

(b) Recordkeeping

Every person who is a manufacturer, private labeler, or distributor of a consumer product shall establish and maintain such records, make such reports, and provide such information as the Commission may, by rule, reasonably require for the purposes of implementing this chapter, or to determine compliance with rules or orders prescribed under this chapter. Upon request of an officer or employee duly designated by the Commission, every such manufacturer, private labeler, or distributor shall permit the inspection of appropriate books, records, and papers relevant to determining whether such manufacturer, private labeler, or distributor has acted or is acting in compliance with this chapter and rules under this chapter.

(c) Identification of manufacturers, importers, retailers, and distributors

Upon request by an officer or employee duly designated by the Commission—

(1) every importer, retailer, or distributor of a consumer product (or other product or substance over which the Commission has jurisdiction under this chapter or any other Act) shall identify the manufacturer of that product by name, address, or such other identifying information as the officer or employee may request, to the extent that such information is known or can be readily determined by the importer, retailer, or distributor; and

(2) every manufacturer shall identify by name, address, or such other identifying infor-

mation as the officer or employee may request—

(A) each retailer or distributor to which the manufacturer directly supplied a given consumer product (or other product or substance over which the Commission has jurisdiction under this chapter or any other Act);

(B) each subcontractor involved in the production or fabrication of such product or substance; and

(C) each subcontractor from which the manufacturer obtained a component thereof.

(d) Manufacturer's compliance

The Commission shall, by rule, condition the manufacturing for sale, offering for sale, distribution in commerce, or importation into the United States of any consumer product or other product on the manufacturer's compliance with the inspection and recordkeeping requirements of this chapter and the Commission's rules with respect to such requirements.

(Pub. L. 92–573, §16, Oct. 27, 1972, 86 Stat. 1222; Pub. L. 110–314, title II, §§215, 223(c)(2), Aug. 14, 2008, 122 Stat. 3056, 3069.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §215(c)(1), inserted subsec. heading.

Subsec. (a)(1). Pub. L. 110–314, §215(a)(1), substituted ''(B) any firewalled conformity assessment bodies accredited under section 2063(f)(2)(D) of this title, or (C)'' for ''or (B)''.

Subsec. (a)(2). Pub. L. 110–314, §215(a)(2), inserted ''firewalled conformity assessment body,'' after ''factory,''.

Subsec. (b). Pub. L. 110–314, §215(c)(2), inserted subsec. heading.

Subsec. (c). Pub. L. 110–314, §215(b), added subsec. (c).

Subsec. (d). Pub. L. 110–314, §223(c)(2), added subsec. (d).

§ 2066. Imported products

(a) Refusal of admission

Any consumer product offered for importation into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) shall be refused admission into such customs territory if such product—

(1) fails to comply with an applicable consumer product safety rule;

(2) is not accompanied by a certificate required by this chapter or any other Act enforced by the Commission, or is accompanied by a false certificate, if the manufacturer in the exercise of due care has reason to know that the certificate is false or misleading in any material respect, or is not accompanied by any label or certificate (including tracking labels) required under section 2063 of this title or any rule or regulation under such section;

(3) is or has been determined to be an imminently hazardous consumer product in a proceeding brought under section 2061 of this title;

(4) has a product defect which constitutes a substantial product hazard (within the meaning of section 2064(a)(2)) of this title; or

(5) is a product which was manufactured by a person who the Commission has informed the Secretary of the Treasury is in violation of subsection (g).

(b) Samples

The Secretary of the Treasury shall obtain without charge and deliver to the Commission, upon the latter's request, a reasonable number of samples of consumer products being offered for import. Except for those owners or consignees who are or have been afforded an opportunity for a hearing in a proceeding under section 2061 of this title with respect to an imminently hazardous product, the owner or consignee of the product shall be afforded an opportunity by the Commission for a hearing in accordance with section 554 of title 5 with respect to the importation of such products into the customs territory of the United States. If it appears from examination of such samples or otherwise that a product must be refused admission under the terms of subsection (a), such product shall be refused admission, unless subsection (c) of this section applies and is complied with.

(c) Modification

If it appears to the Commission that any consumer product which may be refused admission pursuant to subsection (a) of this section can be so modified that it need not (under the terms of paragraphs (1) through (4) of subsection (a)) be refused admission, the Commission may defer final determination as to the admission of such product and, in accordance with such regulations as the Commission and the Secretary of the Treasury shall jointly agree to, permit such product to be delivered from customs custody under bond for the purpose of permitting the owner or consignee an opportunity to so modify such product.

(d) Supervision of modifications

All actions taken by an owner or consignee to modify such product under subsection (c) shall be subject to the supervision of an officer or employee of the Commission and of the Department of the Treasury. If it appears to the Commission that the product cannot be so modified or that the owner or consignee is not proceeding satisfactorily to modify such product, it shall be refused admission into the customs territory of the United States, and the Commission may direct the Secretary to demand redelivery of the product into customs custody, and to seize the product in accordance with section 2071(b) of this title if it is not so redelivered.

(e) Product destruction

Products refused admission into the customs territory of the United States shall be destroyed unless, upon application by the owner, consignee, or importer of record, the Secretary of the Treasury permits the export of the product in lieu of destruction. If the owner, consignee, or importer of record does not export the product within 90 days of approval to export, such product shall be destroyed.

(f) Payment of expenses occasioned by refusal of admission

All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in this section (the amount of such expenses to be determined in ac-

cordance with regulations of the Secretary of the Treasury) and all expenses in connection with the storage, cartage, or labor with respect to any consumer product refused admission under this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

(g) Inspection and recordkeeping requirement

Manufacturers of imported products shall be in compliance with all inspection and recordkeeping requirements under section 2065 of this title applicable to such products, and the Commission shall advise the Secretary of the Treasury of any manufacturer who is not in compliance with all inspection and recordkeeping requirements under section 2065 of this title.

(h) Product surveillance program

(1) The Commission shall establish and maintain a permanent product surveillance program, in cooperation with other appropriate Federal agencies, for the purpose of carrying out the Commission's responsibilities under this chapter and the other Acts administered by the Commission and preventing the entry of unsafe consumer products into the commerce of the United States.

(2) The Commission may provide to the agencies with which it is cooperating under paragraph (1) such information, data, violator lists, test results, and other support, guidance, and documents as may be necessary or helpful for such agencies to cooperate with the Commission to carry out the product surveillance program under paragraph (1).

(3) The Commission shall periodically report to the appropriate Congressional committees the results of the surveillance program under paragraph (1).

(Pub. L. 92–573, § 17, Oct. 27, 1972, 86 Stat. 1223; Pub. L. 100–418, title I, § 1214(d), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 101–608, title I, § 114, Nov. 16, 1990, 104 Stat. 3118; Pub. L. 110–314, title II, §§ 216(b), 223(b), (c)(1), 235(c)(6), Aug. 14, 2008, 122 Stat. 3058, 3068, 3069, 3075.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (a), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110–314, § 216(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''is not accompanied by a certificate required by section 2063 of this title, or is not labeled in accordance with regulations under section 2063(c) of this title;''.

Subsec. (e). Pub. L. 110–314, § 223(b), amended subsec. (e) generally. Prior to amendment, text read as follows: ''Products refused admission into the customs territory of the United States under this section must be exported, except that upon application, the Secretary of the Treasury may permit the destruction of the product in lieu of exportation. If the owner or consignee does not export the product within a reasonable time, the Department of the Treasury may destroy the product.''

Subsec. (g). Pub. L. 110–314, § 223(c)(1), amended subsec. (g) generally. Prior to amendment, text read as follows: ''The Commission may, by rule, condition the importation of a consumer product on the manufacturer's compliance with the inspection and recordkeeping requirements of this chapter and the Commission's rules with respect to such requirements.''

Subsec. (h)(3). Pub. L. 110–314, § 235(c)(6), substituted ''the appropriate Congressional committees'' for ''the Congress''.

1990—Subsec. (h). Pub. L. 101–608 added subsec. (h).

1988—Subsec. (a). Pub. L. 100–418 substituted ''general note 2 of the Harmonized Tariff Schedule of the United States'' for ''general headnote 2 to the Tariff Schedules of the United States''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by sections 216(b) and 223(b) of Pub. L. 110–314 effective on the date that is 30 days after Aug. 14, 2008, see section 239(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

IMPORT SAFETY MANAGEMENT AND INTERAGENCY COOPERATION

Pub. L. 110–314, title II, § 222, Aug. 14, 2008, 122 Stat. 3066, provided that:

''(a) RISK ASSESSMENT METHODOLOGY.—Not later than 2 years after the date of enactment of this Act [Aug. 14, 2008], the Commission shall develop a risk assessment methodology for the identification of shipments of consumer products that are—

''(1) intended for import into the United States; and

''(2) likely to include consumer products in violation of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission.

''(b) USE OF INTERNATIONAL TRADE DATA SYSTEM AND OTHER DATABASES.—In developing the methodology required under subsection (a), the Commission shall—

''(1) provide for the use of the International Trade Data System, insofar as is practicable, established under section 411(d) of the Tariff Act of 1930 (19 U.S.C. 1411(d)) to evaluate and assess information about shipments of consumer products intended for import into the customs territory of the United States;

''(2) incorporate the risk assessment methodology required under this section into its information technology modernization plan;

''(3) examine, in consultation with U.S. Customs and Border Protection, how to share information collected and retained by the Commission, including information in the database required under section 6A of the Consumer Product Safety Act [15 U.S.C. 2055a], for the purpose of identifying shipments of consumer products in violation of section 17(a) of such Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission; and

''(4) examine, in consultation with U.S. Customs and Border Protection, how to share information required by section 15(j) of the CPSA [15 U.S.C. 2064(j)] as added by section 223 of this Act for the purpose of identifying shipments of consumer products in violation of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission.

''(c) COOPERATION WITH U.S. CUSTOMS AND BORDER PROTECTION.—Not later than 1 year after the date of enactment of this Act [Aug. 14, 2008], the Commission shall develop a plan for sharing information and coordinating with U.S. Customs and Border Protection that considers, at a minimum, the following:

''(1) The number of full-time equivalent personnel employed by the Commission that should be stationed at U.S. ports of entry for the purpose of identifying shipments of consumer products that are in vio-

lation of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission.

''(2) The extent and nature of cooperation between the Commission and U.S. Customs and Border Protection personnel stationed at ports of entry in the identification of shipments of consumer product that are in violation of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission under this Act [see Short Title of 2008 Amendment note set out under section 2051 of this title] or any other provision of law.

''(3) The number of full-time equivalent personnel employed by the Commission that should be stationed at the National Targeting Center (or its equivalent) of U.S. Customs and Border Protection, including—

''(A) the extent and nature of cooperation between Commission and U.S. Customs and Border Protection personnel stationed at the National Targeting Center (or its equivalent), as well as at United States ports of entry;

''(B) the responsibilities of Commission personnel assigned to the National Targeting Center (or its equivalent) under subsection (b)(3); and

''(C) whether the information available at the National Targeting Center (or its equivalent) would be useful to the Commission or U.S. Customs and Border Protection in identifying the consumer products described in subsection (a).

''(4) The development of rule sets for the Automated Targeting System and expedited access for the Commission to the Automated Targeting System.

''(5) The information and resources necessary for the development, updating, and effective implementation of the risk assessment methodology required in subsection (a).

''(d) REPORT TO CONGRESS.—Not later than 180 days after completion of the risk assessment methodology required under this section, the Commission shall submit a report to the appropriate Congressional committees concerning, at a minimum, the following:

''(1) The Commission's plan for implementing the risk assessment methodology required under this section.

''(2) The changes made or necessary to be made to the Commission's memorandum of understanding with U.S. Customs and Border Protection.

''(3) The status of—

''(A) the development of the Automated Targeting System rule set required under subsection (c)(4) of this section;

''(B) the Commission's access to the Automated Targeting System; and

''(C) the effectiveness of the International Trade Data System in enhancing cooperation between the Commission and U.S. Customs and Border Protection for the purpose of identifying shipments of consumer products in violation of section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)) or other import provisions enforced by the Commission;

''(4) Whether the Commission requires additional statutory authority under the Consumer Product Safety Act [15 U.S.C. 2051 et seq.], the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.], the Flammable Fabrics Act [15 U.S.C. 1191 et seq.], or the Poison Prevention Packaging Act of 1970 [15 U.S.C. 1471 et seq.] in order to implement the risk assessment methodology required under this section.

''(5) The level of appropriations necessary to implement the risk assessment methodology required under this section.''

[For definitions of ''Commission'' and ''appropriate Congressional committees'' used in section 222 of Pub. L. 110–314, set out above, see section 2(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.]

§ 2067. Exemption of exports

(a) Risk of injury to consumers within United States

This chapter shall not apply to any consumer product if (1) it can be shown that such product is manufactured, sold, or held for sale for export from the United States (or that such product was imported for export), unless (A) such consumer product is in fact distributed in commerce for use in the United States, or (B) the Commission determines that exportation of such product presents an unreasonable risk of injury to consumers within the United States, and (2) such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export; except that this chapter shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States.

(b) Statement of exportation: filing period, information; notification of foreign country; petition for minimum filing period: good cause

Not less than thirty days before any person exports to a foreign country any product which is not in conformity with an applicable consumer product safety rule in effect under this chapter, such person shall file a statement with the Commission notifying the Commission of such exportation, and the Commission, upon receipt of such statement, shall promptly notify the government of such country of such exportation and the basis for such safety standard or rule. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such product, the country and port of destination of such product, and the quantity of such product that will be exported, and shall contain such other information as the Commission may by regulation require. Upon petition filed with the Commission by any person required to file a statement under this subsection respecting an exportation, the Commission may, for good cause shown, exempt such person from the requirement of this subsection that such a statement be filed no less than thirty days before the date of the exportation, except that in no case shall the Commission permit such a statement to be filed later than the tenth day before such date.

(c) Authority to prohibit exports

The Commission may prohibit a person from exporting from the United States for purpose of sale any consumer product that is not in conformity with an applicable consumer product safety rule under this chapter, unless the importing country has notified the Commission that such country accepts the importation of such consumer product, provided that if the importing country has not so notified the Commission within 30 days after the Commission has provided notice to the importing country of the impending shipment, the Commission may take such action as appropriate within its authority with respect to the disposition of the product under the circumstances.

(d) Export pursuant to section 2066(e)

Nothing in this section shall apply to any consumer product, the export of which is permitted by the Secretary of the Treasury pursuant to section 2066(e) of this title.

(Pub. L. 92–573, § 18, Oct. 27, 1972, 86 Stat. 1224; Pub. L. 95–631, § 6(a), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 110–314, title II, § 221(a), Aug. 14, 2008, 122 Stat. 3065.)

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–314, § 221(a)(1), substituted ''any product which is not in conformity with an applicable consumer product safety rule in effect under this chapter,'' for ''any product—

''(1) which is not in conformity with an applicable consumer product safety standard in effect under this chapter, or

''(2) which is declared to be a banned hazardous substance by a rule promulgated under section 2058 of this title,''.

Subsecs. (c), (d). Pub. L. 110–314, § 221(a)(2), added subsecs. (c) and (d).

1978—Subsec. (a). Pub. L. 95–631 designated existing text as subsec. (a) and cl. (A) and in subsec. (a), as so designated, added cl. (B), and added subsec. (b).

§ 2068. Prohibited acts

(a) Designation

It shall be unlawful for any person to—

(1) sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any consumer product, or other product or substance that is regulated under this chapter or any other Act enforced by the Commission, that is not in conformity with an applicable consumer product safety rule under this chapter, or any similar rule, regulation, standard, or ban under any other Act enforced by the Commission;

(2) sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any consumer product, or other product or substance that is—

(B)[1] subject to voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public or if the seller, distributor, or manufacturer knew or should have known of such voluntary corrective action;

(C) subject to an order issued under section 2061 or 2064 of this title; or

(D) a banned hazardous substance within the meaning of section 1261(q)(1) of this title;

(3) fail or refuse to permit access to or copying of records, or fail or refuse to establish or maintain records, or fail or refuse to make reports or provide information, or fail or refuse to permit entry or inspection, as required under this chapter or rule thereunder;

(4) fail to furnish information required by section 2064(b) of this title;

(5) fail to comply with an order issued under section 2064(c) or (d) of this title (relating to notification, to repair, replacement, and refund, and to prohibited acts);

(6) fail to furnish a certificate required by this chapter or any other Act enforced by the Commission, or to issue a false certificate if such person in the exercise of due care has reason to know that the certificate is false or misleading in any material respect; or to fail to comply with any requirement of section 2063 of this title (including the requirement for tracking labels) or any rule or regulation under such section;

(7) fail to comply with any rule under section 2058(g)(2) of this title (relating to stockpiling);

(8) fail to comply with any rule under section 2076(e) of this title (relating to provision of performance and technical data);

(9) fail to comply with any rule or requirement under section 2082 of this title (relating to labeling and testing of cellulose insulation);

(10) fail to file a statement with the Commission pursuant to section 2067(b) of this title;

(11) fail to furnish information required by section 2084 of this title.[2]

(12) sell, offer for sale, distribute in commerce, or import into the United States any consumer product bearing a registered safety certification mark owned by an accredited conformity assessment body, which mark is known, or should have been known, by such person to be used in a manner unauthorized by the owner of that certification mark;

(13) misrepresent to any officer or employee of the Commission the scope of consumer products subject to an action required under section 2061 or 2064 of this title, or to make a material misrepresentation to such an officer or employee in the course of an investigation under this chapter or any other Act enforced by the Commission; or[3]

(14) exercise, or attempt to exercise, undue influence on a third party conformity assessment body (as defined in section 2063(f)(2) of this title) with respect to the testing, or reporting of the results of testing, of any product for compliance under this chapter or any other Act enforced by the Commission, or to subdivide the production of any children's product into small quantities that have the effect of evading any third party testing requirements under section 2063(a)(2) of this title;

(15) export from the United States for purpose of sale any consumer product, or other product or substance regulated by the Commission (other than a consumer product or substance, the export of which is permitted by the Secretary of the Treasury pursuant to section 2066(e) of this title) that—

(A) is subject to an order issued under section 2061 or 2064 of this title or is a banned hazardous substance within the meaning of section 1261(q)(1) of this title; or

(B) is subject to a voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public; or

(16) violate an order of the Commission issued under section 2067(c) of this title.

[1] So in original. No subpar. (A) has been enacted.

[2] So in original. The period probably should be a semicolon.

[3] So in original. The word ''or'' probably should not appear.

(b) Exception

Paragraphs (1) and (2) of subsection (a) of this section shall not apply to any person (1) who holds a certificate issued in accordance with section 2063(a) of this title to the effect that such consumer product conforms to all applicable consumer product safety rules, unless such person knows that such consumer product does not conform, or (2) who relies in good faith on the representation of the manufacturer or a distributor of such product that the product is not subject to an applicable product safety rule.

(Pub. L. 92–573, § 19, Oct. 27, 1972, 86 Stat. 1224; Pub. L. 94–284, §§ 12(b), 13(a), May 11, 1976, 90 Stat. 508, 509; Pub. L. 95–319, § 3(b), July 11, 1978, 92 Stat. 390; Pub. L. 95–631, § 6(b), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 97–414, § 9(j)(4), Jan. 4, 1983, 96 Stat. 2064; Pub. L. 101–608, title I, § 112(d), Nov. 16, 1990, 104 Stat. 3117; Pub. L. 110–314, title II, § 216(a), Aug. 14, 2008, 122 Stat. 3056; Pub. L. 112–28, § 2(b), Aug. 12, 2011, 125 Stat. 279.)

AMENDMENTS

2011—Subsec. (a)(14). Pub. L. 112–28 substituted '', or to subdivide the production of any children's product into small quantities that have the effect of evading any third party testing requirements under section 2063(a)(2) of this title;'' for period at end.

2008—Subsec. (a)(1), (2). Pub. L. 110–314, § 216(a)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which is not in conformity with an applicable consumer product safety standard under this chapter;

''(2) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which has been declared a banned hazardous product by a rule under this chapter;''.

Subsec. (a)(6). Pub. L. 110–314, § 216(a)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''fail to furnish a certificate required by section 2063 of this title or issue a false certificate if such person in the exercise of due care has reason to know that such certificate is false or misleading in any material respect; or to fail to comply with any rule under section 2063(c) of this title (relating to labeling);''.

Subsec. (a)(7) to (10). Pub. L. 110–314, § 216(a)(3)–(6), struck out ''or'' at end of par. (7) and ''and'' at end of par. (8) and substituted semicolon for period at end of pars. (9) and (10).

Subsec. (a)(12) to (16). Pub. L. 110–314, § 216(a)(7), added pars. (12) to (16).

1990—Subsec. (a)(11). Pub. L. 101–608 added par. (11).

1983—Subsec. (a)(7). Pub. L. 97–414, § 9(j)(4)(A), substituted ''section 2058(g)(2)'' for ''section 2058(d)(2)''.

Subsec. (a)(8). Pub. L. 97–414, § 9(j)(4)(B), redesignated par. (9) as (8) and struck out former par. (8) which made it unlawful for any person to fail to comply with any rule under section 2062 of this title (relating to prior notice and description of new consumer products).

Subsec. (a)(9), (10). Pub. L. 97–414, § 9(j)(4)(B), redesignated par. (10), as added by Pub. L. 95–319, as (9). Former par. (9) redesignated (8).

1978—Subsec. (a)(10). Pub. L. 95–631 added par. (10), providing that it be unlawful to fail to file a statement with the Commission pursuant to section 2067(b) of this title.

Pub. L. 95–319 added par. (10), providing that it be unlawful to fail to comply with any rule or requirement under section 2082 of this title.

1976—Subsec. (a). Pub. L. 94–284 substituted ''to'' for ''and to'' and inserted '', and to prohibited acts'' after ''refund'' in par. (5), inserted ''or fail or refuse to establish or maintain records,'' after ''copying of records,'' in par. (3), and added pars. (8) and (9).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–314 effective on the date that is 30 days after Aug. 14, 2008, see section 239(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

DUTY TO REPORT CHOKING INCIDENTS CAUSED BY CHILDREN'S TOYS OR GAMES

For purposes of subsec. (a)(3) of this section, requirement to report information relating to choking incidents caused by children's toys or games to Consumer Product Safety Commission deemed a requirement under this chapter, see section 102 of Pub. L. 103–267, set out as a Reporting Requirements note under section 2064 of this title.

§ 2069. Civil penalties

(a) Amount of penalty

(1) Any person who knowingly violates section 2068 of this title shall be subject to a civil penalty not to exceed $100,000 for each such violation. Subject to paragraph (2), a violation of section 2068(a)(1), (2), (4), (5), (6), (7), (8), (9), (10), or (11) of this title shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed $15,000,000 for any related series of violations. A violation of section 2068(a)(3) of this title shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed $15,000,000 for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of paragraph (1) or (2) of section 2068(a) of this title—

(A) if the person who violated such paragraphs is not the manufacturer or private labeler or a distributor of the products involved, and

(B) if such person did not have either (i) actual knowledge that his distribution or sale of the product violated such paragraphs or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs.

(3)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than December 1, 2011, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

(i) in the case of penalties greater than $1,000 but less than or equal to $10,000, the nearest multiple of $1,000;

(ii) in the case of penalties greater than $10,000 but less than or equal to $100,000, the nearest multiple of $5,000;

(iii) in the case of penalties greater than $100,000 but less than or equal to $200,000, the nearest multiple of $10,000; and

(iv) in the case of penalties greater than $200,000, the nearest multiple of $25,000.

(D) For purposes of this subsection:

(i) The term ''Consumer Price Index'' means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term ''cost-of-living adjustment for the preceding five years'' means the percentage by which—

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

(b) Relevant factors in determining amount of penalty

In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 2068(a) of this title, the Commission shall consider the nature, circumstances, extent, and gravity of the violation, including the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, the number of defective products distributed, the appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses, and such other factors as appropriate.

(c) Compromise of penalty; deductions from penalty

Any civil penalty under this section may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses, the nature, circumstances, extent, and gravity of the violation, including,[1] the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, and the number of defective products distributed, and such other factors as appropriate. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(d) "Knowingly" defined

As used in the first sentence of subsection (a)(1) of this section, the term ''knowingly'' means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(Pub. L. 92–573, § 20, Oct. 27, 1972, 86 Stat. 1225; Pub. L. 94–284, § 13(b), May 11, 1976, 90 Stat. 509; Pub. L. 95–631, § 6(c), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 97–35, title XII, § 1211(c), Aug. 13, 1981, 95 Stat. 721; Pub. L. 101–608, title I, §§ 112(e), 115(a), Nov. 16, 1990, 104 Stat. 3117, 3118; Pub. L. 110–314, title II, § 217(a)(1), (b)(1)(A), Aug. 14, 2008, 122 Stat. 3058.)

[1] So in original. The comma probably should not appear.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–314, § 217(a)(1)(A), (B), substituted ''$100,000'' for ''$5,000'' and substituted ''$15,000,000'' for ''$1,250,000'' in two places.

Subsec. (a)(3)(B). Pub. L. 110–314, § 217(a)(1)(C), which directed amendment of subsec. (a)(1) by substituting ''December 1, 2011,'' for ''December 1, 1994,'' in par. (3)(B), was executed by making the substitution in subsec. (a)(3)(B) to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 110–314, § 217(b)(1)(A)(i), inserted ''the nature, circumstances, extent, and gravity of the violation, including'' after ''shall consider'', substituted ''products distributed,'' for ''products distributed, and'', and inserted '', including how to mitigate undue adverse economic impacts on small businesses, and such other factors as appropriate'' before period at end.

Subsec. (c). Pub. L. 110–314, § 217(b)(1)(A)(ii)(II), inserted '', and such other factors as appropriate'' after ''products distributed''.

Pub. L. 110–314, § 217(b)(1)(A)(ii)(I), which directed amendment of subsec. (c) by inserting '', including how to mitigate undue adverse economic impacts on small businesses, the nature, circumstances, extent, and gravity of the violation, including'' after ''person charged'', was executed by making the insertion after ''person charged'' the first place appearing, to reflect the probable intent of Congress.

1990—Subsec. (a)(1). Pub. L. 101–608, §§ 112(e), 115(a)(1), (2), substituted ''$5,000'' for ''$2,000'', and ''(10), or (11)'' for ''or (10)'', and substituted ''$1,250,000'' for ''$500,000'' in two places.

Subsec. (a)(3). Pub. L. 101–608, § 115(a)(3), added par. (3).

1981—Subsecs. (b) to (d). Pub. L. 97–35 added subsec. (b), redesignated former subsec. (b) as (c), substituted ''the Commission shall consider the appropriateness of such penalty to the size of the business of the person charged, the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, and the number of defective products distributed'' for ''the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered'', and redesignated subsec. (c) as (d).

1978—Subsec. (a)(1). Pub. L. 95–631 made violation of section 2068(a)(10) of this title a separate offense.

1976—Subsec. (a)(1). Pub. L. 94–284 inserted reference to pars. (8) and (9).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 217(a)(1) of Pub. L. 110–314 effective on the date that is the earlier of the date on which final regulations are issued under section 217(b)(2) of Pub. L. 110–314, set out below, or 1 year after Aug. 14, 2008, see section 217(a)(4) of Pub. L. 110–314, set out as a note under section 1194 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

CIVIL PENALTY CRITERIA

Pub. L. 110–314, title II, § 217(b)(2), Aug. 14, 2008, 122 Stat. 3059, provided that: ''Not later than 1 year after the date of enactment of this Act [Aug. 14, 2008], and in accordance with the procedures of section 553 of title 5, United States Code, the [Consumer Product Safety] Commission shall issue a final regulation providing its interpretation of the penalty factors described in sec-

tion 20(b) of the Consumer Product Safety Act (15 U.S.C. 2069(b)), section 5(c)(3) of the Federal Hazardous Substances Act (15 U.S.C. 1264(c)(3)), and section 5(e)(2) of the Flammable Fabrics Act (15 U.S.C. 1194(e)(2)), as amended by subsection (a).''

§ 2070. Criminal penalties

(a) Violation of section 2068 of this title is punishable by—

(1) imprisonment for not more than 5 years for a knowing and willful violation of that section;

(2) a fine determined under section 3571 of title 18; or

(3) both.

(b) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of section 2068 of this title shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a).

(c)(1) In addition to the penalties provided by subsection (a), the penalty for a criminal violation of this chapter or any other Act enforced by the Commission may include the forfeiture of assets associated with the violation.

(2) In this subsection, the term ''criminal violation'' means a violation of this chapter or any other Act enforced by the Commission for which the violator is sentenced to pay a fine, be imprisoned, or both.

(Pub. L. 92–573, § 21, Oct. 27, 1972, 86 Stat. 1225; Pub. L. 110–314, title II, § 217(c)(1), (2), (d), Aug. 14, 2008, 122 Stat. 3060.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, § 217(c)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Any person who knowingly and willfully violates section 2068 of this title after having received notice of noncompliance from the Commission shall be fined not more than $50,000 or be imprisoned not more than one year, or both.''

Subsec. (b). Pub. L. 110–314, § 217(c)(2), struck out '', and who has knowledge of notice of noncompliance received by the corporation from the Commission,'' after ''section 2068 of this title''.

Subsec. (c). Pub. L. 110–314, § 217(d), added subsec. (c).

§ 2071. Injunctive enforcement and seizure

(a) Jurisdiction

The United States district courts shall have jurisdiction to take the following action:

(1) Restrain any violation of section 2068 of this title.

(2) Restrain any person from manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States a product in violation of an order in effect under section 2064(d) of this title.

(3) Restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule.

Such actions may be brought by the Commission (without regard to section 2076(b)(7)(A) of this title) or by the Attorney General in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section process may be served on a defendant in any other district in which the defendant resides or may be found.

(b) Products liable to proceeding

Any consumer product—

(1) which fails to conform with an applicable consumer product safety rule, or

(2) the manufacture for sale, offering for sale, distribution in commerce, or the importation into the United States of which has been prohibited by an order in effect under section 2064(d) of this title,

when introduced into or while in commerce or while held for sale after shipment in commerce shall be liable to be proceeded against on libel of information and condemned in any district court of the United States within the jurisdiction of which such consumer product is found. Proceedings in cases instituted under the authority of this subsection shall conform as nearly as possible to proceedings in rem in admiralty. Whenever such proceedings involving substantially similar consumer products are pending in courts of two or more judicial districts they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest upon notice to all other parties in interest.

(Pub. L. 92–573, § 22, Oct. 27, 1972, 86 Stat. 1225; Pub. L. 94–284, §§ 11(b), 12(c), May 11, 1976, 90 Stat. 507, 508.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–284, §§ 11(b), 12(c)(1), designated existing provision as par. (1) and (3), added par. (2), and in provision following par. (3) substituted ''(without regard to section 2076(b)(7)(A) of this title)'' for ''(with the concurrence of the Attorney General)''.

Subsec. (b). Pub. L. 94–284, § 12(c)(2), amended subsec. (b) generally, inserting provision designated as par. (2) which included within consumer products liable to proceedings, a product of which the manufacture for sale, offering for sale, distribution in commerce, or importation into the United States has been prohibited.

§ 2072. Suits for damages

(a) Persons injured; costs; amount in controversy

Any person who shall sustain injury by reason of any knowing (including willful) violation of a consumer product safety rule, or any other rule or order issued by the Commission may sue any person who knowingly (including willfully) violated any such rule or order in any district court of the United States in the district in which the defendant resides or is found or has an agent, shall recover damages sustained and may, if the court determines it to be in the interest of justice, recover the costs of suit, including reasonable attorneys' fees (determined in accordance with section 2060(f) of this title) and reasonable expert witnesses' fees: *Provided*, That the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and cost, unless such action is brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

(b) Denial and imposition of costs

Except when express provision is made in a statute of the United States, in any case in

which the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) Remedies available

The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by common law or under Federal or State law.

(Pub. L. 92–573, § 23, Oct. 27, 1972, 86 Stat. 1226; Pub. L. 94–284, § 10(c), May 11, 1976, 90 Stat. 507; Pub. L. 96–486, § 3, Dec. 1, 1980, 94 Stat. 2369; Pub. L. 97–35, title XII, § 1211(h)(3)(B), Aug. 13, 1981, 95 Stat. 723.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35 substituted ''section 2060(f) of this title'' for ''section 2059(e)(4) of this title''.

1980—Subsec. (a). Pub. L. 96–486, § 3(a), struck out provision subjecting actions under this section to section 1331 of title 28 as to the amount in controversy and inserted proviso establishing minimum amount in controversy and excepting actions brought against the United States, or agencies, officers, or employees thereof.

Subsecs. (b), (c). Pub. L. 96–486, § 3(b), added subsec. (b) and redesignated former subsec. (b) as (c).

1976—Subsec. (a). Pub. L. 94–284 substituted ''shall'' for ''and shall'' and provision permitting the court to award costs in the interest of justice for a prior provision which permitted the court to award costs in its discretion.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT; APPLICABILITY

For effective date and applicability of amendment by Pub. L. 96–486, see section 4 of Pub. L. 96–486, set out as an Effective Date of 1980 Amendment note under section 1331 of Title 28, Judiciary and Judicial Procedure.

§ 2073. Additional enforcement of product safety rules and section 2064 orders

(a) In general

Any interested person (including any individual or nonprofit, business, or other entity) may bring an action in any United States district court for the district in which the defendant is found or transacts business to enforce a consumer product safety rule or an order under section 2064 of this title, and to obtain appropriate injunctive relief. Not less than thirty days prior to the commencement of such action, such interested person shall give notice by registered mail to the Commission, to the Attorney General, and to the person against whom such action is directed. Such notice shall state the nature of the alleged violation of any such standard or order, the relief to be requested, and the court in which the action will be brought. No separate suit shall be brought under this section if at the time the suit is brought the same alleged violation is the subject of a pending civil or criminal action by the United States under this chapter. In any action under this section the court may in the interest of justice award the costs of suit, including reasonable attorneys' fees (determined in accordance with section 2060(f) of this title) and reasonable expert witnesses' fees.

(b) State Attorney General enforcement

(1) Right of action

Except as provided in paragraph (5), the attorney general of a State, or other authorized State officer, alleging a violation of section 2068(a)(1), (2), (5), (6), (7), (9), or (12) of this title that affects or may affect such State or its residents may bring an action on behalf of the residents of the State in any United States district court for the district in which the defendant is found or transacts business to obtain appropriate injunctive relief.

(2) Initiation of civil action

(A) Notice to Commission required in all cases

A State shall provide written notice to the Commission regarding any civil action under paragraph (1). Except when proceeding under subparagraph (C), the State shall provide the notice at least 30 days before the date on which the State intends to initiate the civil action by filing a complaint.

(B) Filing of complaint

A State may initiate the civil action by filing a complaint—

(i) at any time after the date on which the 30-day period ends; or

(ii) earlier than such date if the Commission consents to an earlier initiation of the civil action by the State.

(C) Actions involving substantial product hazard

Notwithstanding subparagraph (B), a State may initiate a civil action under paragraph (1) by filing a complaint immediately after notifying the Commission of the State's determination that such immediate action is necessary to protect the residents of the State from a substantial product hazard (as defined in section 2064(a) of this title).

(D) Form of notice

The written notice required by this paragraph may be provided by electronic mail, facsimile machine, or any other means of communication accepted by the Commission.

(E) Copy of complaint

A State shall provide a copy of the complaint to the Commission upon filing the complaint or as soon as possible thereafter.

(3) Intervention by the Commission

The Commission may intervene in such civil action and upon intervening—

(A) be heard on all matters arising in such civil action; and

(B) file petitions for appeal of a decision in such civil action.

(4) Construction

Nothing in this section, section 1264(d) of this title, section 1477 of this title, or section 1194(a) of this title shall be construed—

(A) to prevent the attorney general of a State, or other authorized State officer, from exercising the powers conferred on the attorney general, or other authorized State officer, by the laws of such State; or

(B) to prohibit the attorney general of a State, or other authorized State officer, from proceeding in State or Federal court on the basis of an alleged violation of any civil or criminal statute of that State.

(5) Limitation

No separate suit shall be brought under this subsection (other than a suit alleging a violation of paragraph (1) or (2) of section 2068(a) of this title) if, at the time the suit is brought, the same alleged violation is the subject of a pending civil or criminal action by the United States under this chapter.

(6) Restrictions on private counsel

If private counsel is retained to assist in any civil action under paragraph (1), the private counsel retained to assist the State may not—

(A) share with participants in other private civil actions that arise out of the same operative facts any information that is—

(i) subject to attorney-client or work product privilege; and

(ii) was obtained during discovery in the action under paragraph (1); or

(B) use any information that is subject to attorney-client or work product privilege that was obtained while assisting the State in the action under paragraph (1) in any other private civil actions that arise out of the same operative facts.

(Pub. L. 92–573, § 24, Oct. 27, 1972, 86 Stat. 1226; Pub. L. 94–284, § 10(d), May 11, 1976, 90 Stat. 507; Pub. L. 97–35, title XII, § 1211(a), (h)(3)(C), Aug. 13, 1981, 95 Stat. 721, 723; Pub. L. 110–314, title II, § 218(a), Aug. 14, 2008, 122 Stat. 3060.)

AMENDMENTS

2008—Pub. L. 110–314 substituted ''Additional'' for ''Private'' in section catchline, designated existing provisions as subsec. (a), inserted subsec. heading, and added subsec. (b).

1981—Pub. L. 97–35 substituted ''Any interested person (including any individual or nonprofit, business, or other entity)'' for ''Any interested person'', and ''section 2060(f) of this title'' for ''2059(e)(4) of this title''.

1976—Pub. L. 94–284 substituted provision permitting the court to award costs in the interest of justice for the provision which permitted costs to be demanded as part of the complaint and the court to award them to the prevailing party.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

§ 2074. Private remedies

(a) Liability at common law or under State statute not relieved by compliance

Compliance with consumer product safety rules or other rules or orders under this chapter shall not relieve any person from liability at common law or under State statutory law to any other person.

(b) Evidence of Commission's inaction inadmissible in actions relating to consumer products

The failure of the Commission to take any action or commence a proceeding with respect to the safety of a consumer product shall not be admissible in evidence in litigation at common law or under State statutory law relating to such consumer product.

(c) Public information

Subject to sections 2055(a)(2) and 2055(b) of this title but notwithstanding section 2055(a)(1) of this title, (1) any accident or investigation report made under this chapter by an officer or employee of the Commission shall be made available to the public in a manner which will not identify any injured person or any person treating him, without the consent of the person so identified, and (2) all reports on research projects, demonstration projects, and other related activities shall be public information.

(Pub. L. 92–573, § 25, Oct. 27, 1972, 86 Stat. 1227.)

PREEMPTION

The provisions of this section establishing the extent to which the Consumer Product Safety Act [15 U.S.C. 2051 et seq.] preempts, limits, or otherwise affects any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law not to be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation under the Consumer Product Safety Act, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation, see section 231 of Pub. L. 110–314, set out as a note under section 2051 of this title.

§ 2075. State standards

(a) State compliance to Federal standards

Whenever a consumer product safety standard under this chapter is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.

(b) Consumer product safety requirements which impose performance standards more stringent than Federal standards

Subsection (a) of this section does not prevent the Federal Government or the government of any State or political subdivision of a State from establishing or continuing in effect a safety requirement applicable to a consumer product for its own use which requirement is designed to protect against a risk of injury associated with the product and which is not identical to the consumer product safety standard applicable to the product under this chapter if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the standard applicable under this chapter.

(c) Exemptions

Upon application of a State or political subdivision of a State, the Commission may by rule, after notice and opportunity for oral presentation of views, exempt from the provisions of subsection (a) (under such conditions as it may impose in the rule) any proposed safety standard or regulation which is described in such application and which is designed to protect against a risk of injury associated with a consumer product subject to a consumer product safety standard under this chapter if the State or political subdivision standard or regulation—

(1) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard under this chapter, and

(2) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or regulation on interstate commerce, the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such standard or regulation, the cost of complying with such standard or regulation, the geographic distribution of the consumer product to which the standard or regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or regulation, and the need for a national, uniform standard under this chapter for such consumer product.

(Pub. L. 92–573, § 26, Oct. 27, 1972, 86 Stat. 1227; Pub. L. 94–284, § 17(d), May 11, 1976, 90 Stat. 514.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–284 substituted provision that a standard provide a significantly higher degree of protection from the risk of injury for the provision that the standard impose a higher level of performance.

Subsec. (c). Pub. L. 94–284 substituted requirement that a State standard provide a significantly higher degree of protection from the risk of injury than the standard under this chapter for the requirement that the State standard impose a higher level of performance, eliminated the requirement of a compelling local condition, and inserted the requirement that the Commission make specific findings in determining the burden on interstate commerce.

PREEMPTION

The provisions of this section establishing the extent to which the Consumer Product Safety Act [15 U.S.C. 2051 et seq.] preempts, limits, or otherwise affects any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law not to be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation under the Consumer Product Safety Act, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation, see section 231 of Pub. L. 110–314, set out as a note under section 2051 of this title.

§ 2076. Additional functions of Consumer Product Safety Commission

(a) Authority to conduct hearings or other inquiries

The Commission may, by one or more of its members or by such agents or agency as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. A Commissioner who participates in such a hearing or other inquiry shall not be disqualified solely by reason of such participation from subsequently participating in a decision of the Commission in the same manner. The Commission shall publish notice of any proposed hearing in the Federal Register and shall afford a reasonable opportunity for interested persons to present relevant testimony and data.

(b) Commission powers; orders

The Commission shall also have the power—

(1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe to carry out a specific regulatory or enforcement function of the Commission; and such submission shall be made within such reasonable period and under oath or otherwise as the Commission may determine;

(2) to administer oaths;

(3) to require by subpena the attendance and testimony of witnesses and the production of all documentary and physical evidence relating to the execution of its duties;

(4) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(7) to—

(A) initiate, prosecute, defend, or appeal (other than to the Supreme Court of the United States), through its own legal representative and in the name of the Commission, any civil action if the Commission makes a written request to the Attorney General for representation in such civil action and the Attorney General does not within the 45-day period beginning on the date such request was made notify the Commission in writing that the Attorney General will represent the Commission in such civil action, and

(B) initiate, prosecute, or appeal, through its own legal representative, with the concurrence of the Attorney General or through the Attorney General, any criminal action,

for the purpose of enforcing the laws subject to its jurisdiction;

(8) to lease buildings or parts of buildings in the District of Columbia, without regard to section 8141 of title 40, for the use of the Commission;

(9) to delegate to the general counsel of the Commission the authority to issue subpoenas solely to Federal, State, or local government agencies for evidence described in paragraph (3); and

(10) to delegate any of its functions or powers, other than the power to issue subpenas under paragraph (3) (except as provided in paragraph (9)), to any officer or employee of the Commission.

An order issued under paragraph (1) shall contain a complete statement of the reason the Commission requires the report or answers specified in the order to carry out a specific regulatory or enforcement function of the Commission. Such an order shall be designed to place the least burden on the person subject to the order as is practicable taking into account the purpose for which the order was issued.

(c) Noncompliance with subpena or Commission order; contempt

Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission (subject to subsection (b)(7)) or by the Attorney General, in case of refusal to obey a subpena or order of the Commission issued under subsection (b) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(d) Disclosure of information

No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

(e) Performance and technical data

The Commission may by rule require any manufacturer of consumer products to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of this chapter, and to give such notification of such performance and technical data at the time of original purchase to prospective purchasers and to the first purchaser of such product for purposes other than resale, as it determines necessary to carry out the purposes of this chapter.

(f) Purchase of consumer products by Commission

For purposes of carrying out this chapter, the Commission may purchase any consumer product and it may require any manufacturer, distributor, or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's, or retailer's cost.

(g) Contract authority

The Commission is authorized to enter into contracts with governmental entities, private organizations, or individuals for the conduct of activities authorized by this chapter.

(h) Research, development, and testing facilities

The Commission may plan, construct, and operate a facility or facilities suitable for research, development, and testing of consumer products in order to carry out this chapter.

(i) Recordkeeping; audit

(1) Each recipient of assistance under this chapter pursuant to grants or contracts entered into under other than competitive bidding procedures shall keep such records as the Commission by rule shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project undertaken in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Commission and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the grants or contracts entered into under this chapter under other than competitive bidding procedures.

(j) Report to President and Congress

Notwithstanding section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note), the Commission shall prepare and submit to the President and the Congress at the beginning of each regular session of Congress a comprehensive report on the administration of this chapter for the preceding fiscal year. Such report shall include—

(1) a thorough appraisal, including statistical analyses, estimates, and long-term projections, of the incidence of injury and effects to the population resulting from consumer products, with a breakdown, insofar as practicable, among the various sources of such injury;

(2) a list of consumer product safety rules prescribed or in effect during such year;

(3) an evaluation of the degree of observance of consumer product safety rules, including a list of enforcement actions, court decisions, and compromises of alleged violations, by location and company name;

(4) a summary of outstanding problems confronting the administration of this chapter in order of priority;

(5) the number and a summary of recall orders issued under section 2061 or 2064 of this title during such year and a summary of voluntary corrective actions taken by manufacturers in consultation with the Commission of which the Commission has notified the public, and an assessment of such orders and actions;

(6) beginning not later than 1 year after August 14, 2008—

(A) progress reports and incident updates with respect to action plans implemented under section 2064(d) of this title;

(B) statistics with respect to injuries and deaths associated with products that the Commission determines present a substantial product hazard under section 2064(c) of this title; and

(C) the number and type of communication from consumers to the Commission with respect to each product with respect to which the Commission takes action under section 2064(d) of this title;

(7) an analysis and evaluation of public and private consumer product safety research activities;

(8) a list, with a brief statement of the issues, of completed or pending judicial actions under this chapter;

(9) the extent to which technical information was disseminated to the scientific and commercial communities and consumer information was made available to the public;

(10) the extent of cooperation between Commission officials and representatives of industry and other interested parties in the implementation of this chapter, including a log or summary of meetings held between Commission officials and representatives of industry and other interested parties;

(11) an appraisal of significant actions of State and local governments relating to the responsibilities of the Commission;

(12) with respect to voluntary consumer product safety standards for which the Commission has participated in the development through monitoring or offering of assistance and with respect to voluntary consumer product safety standards relating to risks of injury that are the subject or regulatory action by the Commission, a description of—

(A) the number of such standards adopted;

(B) the nature and number of the products which are the subject of such standards;

(C) the effectiveness of such standards in reducing potential harm from consumer products;

(D) the degree to which staff members of the Commission participate in the development of such standards;

(E) the amount of resources of the Commission devoted to encouraging development of such standards; and

(F) such other information as the Commission determines appropriate or necessary to inform the Congress on the current status of the voluntary consumer product safety standard program; and

(13) such recommendations for additional legislation as the Commission deems necessary to carry out the purposes of this chapter.

(k) Budget estimates and requests; legislative recommendations; testimony; comments on legislation

(1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(Pub. L. 92–573, § 27, Oct. 27, 1972, 86 Stat. 1227; Pub. L. 94–273, § 31, Apr. 21, 1976, 90 Stat. 380; Pub. L. 94–284, §§ 8(b), 11(c), (d), 14, May 11, 1976, 90 Stat. 506–509; Pub. L. 95–631, § 11, Nov. 10, 1978, 92 Stat. 3748; Pub. L. 97–35, title XII, §§ 1207(b), 1208, 1209(c), 1211(d), Aug. 13, 1981, 95 Stat. 718, 720, 721; Pub. L. 110–314, title II, § 209(a), Aug. 14, 2008, 122 Stat. 3046; Pub. L. 112–28, § 8, Aug. 12, 2011, 125 Stat. 282.)

REFERENCES IN TEXT

Section 3003 of the Federal Reports Elimination and Sunset Act of 1995, referred to in subsec. (j), is section 3003 of Pub. L. 104–66, which is set out as a note under section 1113 of Title 31, Money and Finance.

CODIFICATION

In subsec. (b)(6), ''section 1342 of title 31'' substituted for ''section 3679 of the Revised Statutes (31 U.S.C. 665(b))'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

''Section 8141 of title 40'' substituted in subsec. (b)(8) for ''the Act of March 3, 1877 (40 U.S.C. 34)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2011—Subsec. (b)(3). Pub. L. 112–28, § 8(1), inserted ''and physical'' after ''documentary''.

Subsec. (b)(9). Pub. L. 112–28, § 8(2), (3), added par. (9). Former par. (9) redesignated (10).

Subsec. (b)(10). Pub. L. 112–28, § 8(3), (4), redesignated par. (9) as (10) and inserted ''(except as provided in paragraph (9))'' after ''paragraph (3)''.

2008—Subsec. (j). Pub. L. 110–314, § 209(a)(1), substituted ''Notwithstanding section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note), the Commission'' for ''The Commission'' in introductory provisions.

Subsec. (j)(5) to (13). Pub. L. 110–314, § 209(a)(2), added pars. (5) and (6) and redesignated former pars. (5) to (11) as (7) to (13), respectively.

1981—Subsec. (b). Pub. L. 97–35, § 1208, substituted in par. (1) ''may prescribe to carry out a specific regulatory or enforcement function of the Commission'' for ''may prescribe'' and in provision following par. (9) inserted requirement that an order issued under par. (1) shall contain a complete statement of the reason the Commission requires the report or answers specified in the order to carry out a specific regulatory or enforcement function of the commission, and that such an order shall be designed to place the least burden on the person subject to the order as is practicable, taking into account the purposes for which the order was issued.

Subsec. (j)(10), (11). Pub. L. 97–35, § 1209(c), added par. (10) and redesignated former par. (10) as (11).

Subsec. (*l*). Pub. L. 97–35, § 1207(b), struck out subsec. (*l*) which provided for reports to the House of Representatives and the Senate of proposed consumer product safety rules and regulations.

Subsec. (m). Pub. L. 97–35, § 1211(d), struck out subsec. (m) which defined ''rule'', provided for a study of all the rules in effect on Nov. 10, 1978, and required a report be made to Congress recommending deletion of particular rules or parts of particular rules and initiation of particular rulemaking proceedings.

1978—Subsec. (m). Pub. L. 95–631 added subsec. (m).

1976—Subsec. (b)(7). Pub. L. 94–284, § 11(c), permitted the Commission to initiate, defend, prosecute, or appeal any civil action through its own legal representative provided that the Commission make a written request to the Attorney General for such representation and the Attorney General fail within a 45 day period to notify the Commission in writing that the Attorney General will represent the Commission, and with regard to criminal action, permitted the Commission to initiate, prosecute, or appeal with its own legal representative, with the concurrence of the Attorney General, or through the Attorney General.

Subsec. (b)(8), (9). Pub. L. 94–284, § 8(b), added par. (8) and redesignated former par. (8) as par (9).

Subsec. (c). Pub. L. 94–284, § 11(d), substituted ''(subject to subsection (b)(7))'' for ''with the concurrence of the Attorney General''.

Subsec. (j). Pub. L. 94–273 substituted ''at the beginning of each regular session of Congress'' for ''on or before October 1 of each year''.

Subsec. (*l*). Pub. L. 94–284, § 14, added subsec. (*l*).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–314, title II, § 209(b), Aug. 14, 2008, 122 Stat. 3047, provided that: ''The amendments made by this section [amending this section] shall apply with respect to reports submitted for fiscal year 2009 and thereafter.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 1207(b) of Pub. L. 97–35 applicable with respect to consumer product safety rules under this chapter and regulations under chapters 25 and 30 of this title promulgated after Aug. 13, 1981, and amendment by sections 1208, 1209(c), and 1211(d) of Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

SUBMISSION OF COPY OF CERTAIN DOCUMENTS TO CONGRESS

Pub. L. 110–314, title II, § 203(a), Aug. 14, 2008, 122 Stat. 3040, provided that: ''Notwithstanding any rule, regulation, or order to the contrary, the [Consumer Product Safety] Commission shall comply with the requirements of section 27(k) of the Consumer Product Safety Act (15 U.S.C. 2076(k)) with respect to budget recommendations, legislative recommendations, testimony, and comments on legislation submitted by the Commission to the President or the Office of Management and Budget after the date of enactment of this Act [Aug. 14, 2008].''

USER FEE STUDY

Pub. L. 101–608, title I, § 119, Nov. 16, 1990, 104 Stat. 3122, directed Consumer Product Safety Commission to conduct a study of feasibility of requiring entities subject to Consumer Product Safety Act (15 U.S.C. 2051 et seq.) to pay to Commission amounts to defray reasonable costs of particular services provided by Commission to such entities, with Commission to complete study within one year of Nov. 16, 1990, and report results of study to Congress.

§ 2076a. Report on civil penalties

(1) Beginning 1 year after November 16, 1990, and every year thereafter, the Consumer Product Safety Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives the information specified in paragraph (2). Such information may be included in the annual report to the Congress submitted by the Commission.

(2) The Commission shall submit information with respect to the imposition of civil penalties under the statutes which it administers. The information shall include the number of civil penalties imposed, an identification of the violations that led to the imposition of such penalties, and the amount of revenue recovered from the imposition of such penalties.

(Pub. L. 101–608, title I, § 115(d), Nov. 16, 1990, 104 Stat. 3121.)

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 1990, and not as part of the Consumer Product Safety Act which comprises this chapter.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 2076b. Inspector General audits and reports

(a) Improvements by the Commission

The Inspector General of the Commission shall conduct reviews and audits to assess—

(1) the Commission's capital improvement efforts, including improvements and upgrades of the Commission's information technology architecture and systems and the development of the database of publicly available information on incidents involving injury or death required under section 2055a of this title, as added by section 212 of this Act; and

(2) the adequacy of procedures for accrediting conformity assessment bodies as authorized by section 2063(a)(3) of this title, as amended by this Act, and overseeing the third party testing required by such section.

(b) Employee complaints

Within 1 year after August 14, 2008, the Inspector General shall conduct a review of—

(1) complaints received by the Inspector General from employees of the Commission about failures of other employees to enforce the rules or regulations of the Consumer Product Safety Act [15 U.S.C. 2051 et seq.] or any other Act enforced by the Commission or otherwise carry out their responsibilities under such Acts if such alleged failures raise issues of conflicts of interest, ethical violations, or the absence of good faith; and

(2) actions taken by the Commission to address such failures and complaints, including an assessment of the timeliness and effectiveness of such actions.

(c) Public Internet website links

Not later than 30 days after August 14, 2008, the Commission shall establish and maintain—

(1) a direct link on the homepage of its Internet website to the Internet webpage of the Commission's Office of Inspector General; and

(2) a mechanism on the webpage of the Commission's Office of Inspector General by which individuals may anonymously report cases of waste, fraud, or abuse with respect to the Commission.

(d) Reports

(1) Activities and needs of Inspector General

Not later than 60 days after August 14, 2008, the Inspector General of the Commission shall transmit a report to the appropriate Congressional committees on the activities of the Inspector General, any structural barriers which

prevent the Inspector General from providing robust oversight of the activities of the Commission, and any additional authority or resources that would facilitate more effective oversight.

(2) Reviews of improvements and employee complaints

Beginning for fiscal year 2010, the Inspector General of the Commission shall include in an annual report to the appropriate Congressional committees the Inspector General's findings, conclusions, and recommendations from the reviews and audits under subsections (a) and (b).

(Pub. L. 110–314, title II, § 205, Aug. 14, 2008, 122 Stat. 3043.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 110–314, Aug. 14, 2008, 122 Stat. 3016, known as the Consumer Product Safety Improvement Act of 2008. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 2051 of this title and Tables.

The Consumer Product Safety Act, referred to in subsec. (b)(1), is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

CODIFICATION

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Consumer Product Safety Act which comprises this chapter.

DEFINITIONS

For definitions of ''Commission'' and ''appropriate Congressional committees'' used in this section, see section 2(a) of Pub. L. 110–314, set out as a note under section 2051 of this title.

§ 2077. Chronic Hazard Advisory Panels

(a) Appointment; purposes

The Commission shall appoint Chronic Hazard Advisory Panels (hereinafter referred to as the Panel or Panels) to advise the Commission in accordance with the provisions of section 2080(b) of this title respecting the chronic hazards of cancer, birth defects, and gene mutations associated with consumer products.

(b) Composition; membership

Each Panel shall consist of 7 members appointed by the Commission from a list of nominees who shall be nominated by the President of the National Academy of Sciences from scientists—

(1) who are not officers or employees of the United States (other than employees of the National Institutes of Health, the National Toxicology Program, or the National Center for Toxicological Research), and who do not receive compensation from or have any substantial financial interest in any manufacturer, distributor, or retailer of a consumer product; and

(2) who have demonstrated the ability to critically assess chronic hazards and risks to human health presented by the exposure of humans to toxic substances or as demonstrated by the exposure of animals to such substances.

The President of the National Academy of Sciences shall nominate for each Panel a number of individuals equal to three times the number of members to be appointed to the Panel.

(c) Chairman and Vice Chairman; election; term

The Chairman and Vice Chairman of the Panel shall be elected from among the members and shall serve for the duration of the Panel.

(d) Majority vote

Decisions of the Panel shall be made by a majority of the Panel.

(e) Administrative support services

The Commission shall provide each Panel with such administrative support services as it may require to carry out its duties under section 2080 of this title.

(f) Compensation

A member of a Panel appointed under subsection (a) shall be paid at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which the member is engaged in the actual performance of the duties of the Panel.

(g) Requests for and disclosures of information

Each Panel shall request information and disclose information to the public, as provided in subsection (h), only through the Commission.

(h) Information from other Federal departments and agencies

(1) Notwithstanding any statutory restriction on the authority of agencies and departments of the Federal Government to share information, such agencies and departments shall provide the Panel with such information and data as each Panel, through the Commission, may request to carry out its duties under section 2080 of this title. Each Panel may request information, through the Commission, from States, industry and other private sources as it may require to carry out its responsibilities.

(2) Section 2055 of this title shall apply to the disclosure of information by the Panel but shall not apply to the disclosure of information to the Panel.

(Pub. L. 92–573, § 28, as added Pub. L. 97–35, title XII, § 1206(a), Aug. 13, 1981, 95 Stat. 716; amended Pub. L. 101–608, title I, § 116, Nov. 16, 1990, 104 Stat. 3121; Pub. L. 110–314, title II, § 235(c)(6), Aug. 14, 2008, 122 Stat. 3075.)

PRIOR PROVISIONS

A prior section 2077, Pub. L. 92–573, § 28, Oct. 27, 1972, 86 Stat. 1230, provided for establishment and membership of Product Safety Advisory Council, prior to repeal by Pub. L. 97–35, title XII, § 1205(a)(1), Aug. 13, 1981, 95 Stat. 716.

AMENDMENTS

2008—Pub. L. 110–314, which directed amendment of this section by substituting ''the appropriate Congressional committees'' for ''the Congress'' in subsecs. (j)(10)(F) and (k)(1), (2), could not be executed because this section does not contain a subsec. (j) or (k).

1990—Subsec. (b)(1). Pub. L. 101–608 inserted ''(other than employees of the National Institutes of Health, the National Toxicology Program, or the National Center for Toxicological Research)'' after ''States''.

EFFECTIVE DATE

Section applicable with respect to regulations under this chapter and chapters 25 and 30 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 2078. Cooperation with States and other Federal agencies

(a) Programs to promote Federal-State cooperation

The Commission shall establish a program to promote Federal-State cooperation for the purposes of carrying out this chapter. In implementing such program the Commission may—

(1) accept from any State or local authorities engaged in activities relating to health, safety, or consumer protection assistance in such functions as injury data collection, investigation, and educational programs, as well as other assistance in the administration and enforcement of this chapter which such States or localities may be able and willing to provide and, if so agreed, may pay in advance or otherwise for the reasonable cost of such assistance, and

(2) commission any qualified officer or employee of any State or local agency as an officer of the Commission for the purpose of conducting examinations, investigations, and inspections.

(b) Appropriateness of State and local programs

In determining whether such proposed State and local programs are appropriate in implementing the purposes of this chapter, the Commission shall give favorable consideration to programs which establish separate State and local agencies to consolidate functions relating to product safety and other consumer protection activities.

(c) Cooperation of Federal departments and agencies

The Commission may obtain from any Federal department or agency such statistics, data, program reports, and other materials as it may deem necessary to carry out its functions under this chapter. Each such department or agency may cooperate with the Commission and, to the extent permitted by law, furnish such materials to it. The Commission and the heads of other departments and agencies engaged in administering programs related to product safety shall, to the maximum extent practicable, cooperate and consult in order to insure fully coordinated efforts.

(d) Utilization of National Institute of Standards and Technology

The Commission shall, to the maximum extent practicable, utilize the resources and facilities of the National Institute of Standards and Technology, on a reimbursable basis, to perform research and analyses related to risks of injury associated with consumer products (including fire and flammability risks), to develop test methods, to conduct studies and investigations, and to provide technical advice and assistance in connection with the functions of the Commission.

(e) Copies of accident or investigation reports to other agencies; conditions

Notwithstanding section 2055(a)(3) of this title, the Commission may provide to another Federal agency or a State or local agency or authority engaged in activities relating to health, safety, or consumer protection, copies of any accident or investigation report made under this chapter by any officer, employee, or agent of the Commission only if (1) information which under section 2055(a)(2) of this title is to be considered confidential is not included in any copy of such report which is provided under this subsection; and (2) each Federal agency and State and local agency and authority which is to receive under this subsection a copy of such report provides assurances satisfactory to the Commission that the identity of any injured person and any person who treated an injured person will not, without the consent of the person identified, be included in—

(A) any copy of any such report, or

(B) any information contained in any such report,

which the agency or authority makes available to any member of the public. No Federal agency or State or local agency or authority may disclose to the public any information contained in a report received by the agency or authority under this subsection unless with respect to such information the Commission has complied with the applicable requirements of section 2055(b) of this title.

(f) Sharing of information with Federal, State, local, and foreign government agencies

(1) Agreements and conditions

Notwithstanding the requirements of subsections (a)(3) and (b) of section 2055 of this title, relating to public disclosure of information, the Commission may make information obtained by the Commission available to any Federal, State, local, or foreign government agency upon the prior certification of an appropriate official of any such agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement or consumer protection purposes, if—

(A) the agency has set forth a bona fide legal basis for its authority to maintain the material in confidence;

(B) the materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of—

(i) laws regulating the manufacture, importation, distribution, or sale of defective or unsafe consumer products, or other

practices substantially similar to practices prohibited by any law administered by the Commission;

(ii) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or

(iii) with respect to a foreign law enforcement agency, with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined in or covered by a criminal mutual legal assistance treaty in force between the government of the United States and the foreign law enforcement agency's government; and

(C) in the case of a foreign government agency, such agency is not from a foreign state that the Secretary of State has determined, in accordance with section 4605(j) of title 50, has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 4605(j)(4) of title 50.

(2) Abrogation of agreements

The Commission may abrogate any agreement or memorandum of understanding with another agency if the Commission determines that the other agency has failed to maintain in confidence any information provided under such agreement or memorandum of understanding, or has used any such information for purposes other than those set forth in such agreement or memorandum of understanding.

(3) Additional rules against disclosure

Except as provided in paragraph (4), the Commission shall not be required to disclose under section 552 of title 5 or any other provision of law—

(A) any material obtained from a foreign government agency, if the foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;

(B) any material reflecting a consumer complaint obtained from any other foreign source, if that foreign source supplying the material has requested confidential treatment as a condition of providing the material; or

(C) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign government agencies.

(4) Limitation

Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.

(5) Definition

In this subsection, the term ''foreign government agency'' means—

(A) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; and

(B) any multinational organization, to the extent that it is acting on behalf of an entity described in subparagraph (A).

(g) Notification to State health departments

Whenever the Commission is notified of any voluntary corrective action taken by a manufacturer (or a retailer in the case of a retailer selling a product under its own label) in consultation with the Commission, or issues an order under section 2064(c) or (d) of this title with respect to any product, the Commission shall notify each State's health department (or other agency designated by the State) of such voluntary corrective action or order.

(Pub. L. 92–573, § 29, Oct. 27, 1972, 86 Stat. 1230; Pub. L. 94–284, § 15, May 11, 1976, 90 Stat. 510; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 110–314, title II, §§ 207, 235(c)(7), Aug. 14, 2008, 122 Stat. 3044, 3075.)

AMENDMENTS

2008—Subsec. (e). Pub. L. 110–314, § 235(c)(7), substituted ''Notwithstanding section 2055(a)(3) of this title, the Commission'' for ''The Commission'' in introductory provisions.

Subsecs. (f), (g). Pub. L. 110–314, § 207, added subsecs. (f) and (g).

1988—Subsec. (d). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

1976—Subsec. (e). Pub. L. 94–284 added subsec. (e).

§ 2079. Transfers of functions

(a) Hazardous substances and poisons

The functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.] and the Poison Prevention Packaging Act of 1970 [15 U.S.C. 1471 et seq.] are transferred to the Commission. The functions of the Secretary of Health, Education, and Welfare under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], to the extent such functions relate to the administration and enforcement of the Poison Prevention Packaging Act of 1970, are transferred to the Commission.

(b) Flammable fabrics

The functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act [15 U.S.C. 1191 et seq.] are transferred to the Commission. The functions of the Federal Trade Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], to the extent such functions relate to the administration and enforcement of the Flammable Fabrics Act, are transferred to the Commission.

(c) Household refrigerators

The functions of the Secretary of Commerce and the Federal Trade Commission under the Act of August 2, 1956 [15 U.S.C. 1211 et seq.] are transferred to the Commission.

(d) Repealed. Pub. L. 110–314, title II, § 237, Aug. 14, 2008, 122 Stat. 3076

(e) Transfer of personnel, property, records, etc.; continued application of orders, rules, etc.

(1)(A) All personnel, property, records, obligations, and commitments, which are used primarily with respect to any function transferred under the provisions of subsections (a), (b) and (c) of this section shall be transferred to the Commission, except those associated with fire and flammability research in the National Institute of Standards and Technology. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for one year after such transfer, except that the Chairman of the Commission shall have full authority to assign personnel during such one-year period in order to efficiently carry out functions transferred to the Commission under this section.

(B) Any commissioned officer of the Public Health Service who upon the day before the effective date of this section, is serving as such officer primarily in the performance of functions transferred by this chapter to the Commission, may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Commission subject to subparagraph (A) of this paragraph, under the terms prescribed in paragraphs (3) through (8)(A) of section 15(b) of the Clean Air Amendments of 1970.

(2) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges (A) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and (B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission, by any court of competent jurisdiction, or by operation of law.

(3) The provisions of this section shall not affect any proceedings pending at the time this section takes effect before any department or agency, functions of which are transferred by this section; except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Commission. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Commission, by a court of competent jurisdiction, or by operation of law.

(4) The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted; except that if before the date on which this section takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Commission, then such suit shall be continued by the Commission. No cause of action, and no suit, action, or other proceeding, by or against any department or agency (or officer thereof in his official capacity) functions of which are transferred by this section, shall abate by reason of the enactment of this section. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Commission as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(f) "Function" defined

For purposes of this section, (1) the term ''function'' includes power and duty, and (2) the transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any office or officer of such agency, or department.

(Pub. L. 92–573, § 30, Oct. 27, 1972, 86 Stat. 1231; Pub. L. 94–284, §§ 3(f), 16, May 11, 1976, 90 Stat. 504, 510; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 110–314, title II, § 237, Aug. 14, 2008, 122 Stat. 3076.)

REFERENCES IN TEXT

The Federal Hazardous Substances Act, referred to in subsec. (a), is Pub. L. 86–613, July 12, 1960, 74 Stat. 372, which is classified generally to chapter 30 (§ 1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

The Poison Prevention Packaging Act of 1970, referred to in subsec. (a), is Pub. L. 91–601, Dec. 30, 1970, 84 Stat. 1670, which is classified principally to chapter 39A (§ 1471 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of this title and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (a), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Flammable Fabrics Act, referred to in subsec. (b), is act June 30, 1953, ch. 164, 67 Stat. 111, which is classified generally to chapter 25 (§ 1191 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1191 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

Act of August 2, 1956, referred to in subsec. (c), is act Aug. 2, 1956, ch. 890, 70 Stat. 953, which is classified generally to chapter 26 (§ 1211 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

For the effective date of this section or, alternatively, the time or date this section takes effect, referred to in subsec. (e)(1)(B), (2), (3), and (4), see section 34(2) of Pub. L. 92–573, set out as an Effective Date note under section 2051 of this title.

Paragraphs (3) through (8)(A) of section 15(b) of the Clean Air Amendments of 1970, referred to in subsec. (e)(1)(B), are pars. (3) through (8)(A) of section 15(b) of Pub. L. 91–604, Dec. 31, 1970, 84 Stat. 1710, which is set out as a note under section 215 of Title 42, The Public Health and Welfare.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–314 struck out subsec. (d). Prior to amendment, text read as follows: ''A risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated under this chapter only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under this chapter. Such a rule shall identify the risk of injury proposed to be regulated under this chapter and shall be promulgated in accordance with section 553 of title 5; except that the period to be provided by the Commission pursuant to subsection (c) of such section for the submission of data, views, and arguments respecting the rule shall not exceed thirty days from the date of publication pursuant to subsection (b) of such section of a notice respecting the rule.''

1988—Subsec. (e)(1)(A). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

1976—Subsec. (a). Pub. L. 94–284, § 3(f), struck out ''of the Administrator of the Environmental Protection Agency and'' before ''of the Secretary of Health, Education, and Welfare'' and substituted ''Federal Food, Drug, and Cosmetic Act'' for ''Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Act of 1970''.

Subsec. (d). Pub. L. 94–284, § 16, inserted requirement that the Commission find by a rule, promulgated in accordance with section 553 of title 5, that it is within the public interest to regulate a risk of injury under this chapter which could be eliminated or reduced by action under the enumerated acts.

§ 2080. Limitations on jurisdiction of Consumer Product Safety Commission

(a) Authority to regulate

The Commission shall have no authority under this chapter to regulate any risk of injury associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.]; the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; or the Clean Air Act [42 U.S.C. 7401 et seq.]. The Commission shall have no authority under this chapter to regulate any risk of injury associated with electronic product radiation emitted from an electronic product (as such terms are defined by sections 355(1) and (2)[1] of the Public Health Service Act) if such risk of injury may be subjected to regulation under subpart 3[1] of part F of title III of the Public Health Service Act.

(b) Certain notices of proposed rulemaking; duties of Chronic Hazard Advisory Panel

(1) The Commission may not issue—

(A) an advance notice of proposed rulemaking for a consumer product safety rule,

(B) a notice of proposed rulemaking for a rule under section 2076(e) of this title, or

(C) an advance notice of proposed rulemaking for regulations under section 1261(q)(1) of this title,

relating to a risk of cancer, birth defects, or gene mutations from a consumer product unless a Chronic Hazard Advisory Panel, established under section 2077 of this title, has, in accordance with paragraph (2), submitted a report to the Commission with respect to whether a substance contained in such product is a carcinogen, mutagen, or teratogen.

(2)(A) Before the Commission issues an advance notice of proposed rulemaking for—

(i) a consumer product safety rule,

(ii) a rule under section 2076(e) of this title, or

(iii) a regulation under section 1261(q)(1) of this title,

relating to a risk of cancer, birth defects, or gene mutations from a consumer product, the Commission shall request the Panel to review the scientific data and other relevant information relating to such risk to determine if any substance in the product is a carcinogen, mutagen, or a teratogen and to report its determination to the Commission.

(B) When the Commission appoints a Panel, the Panel shall convene within 30 days after the date the final appointment is made to the Panel. The Panel shall report its determination to the Commission not later than 120 days after the date the Panel is convened or, if the Panel requests additional time, within a time period specified by the Commission. If the determination reported to the Commission states that a substance in a product is a carcinogen, mutagen, or a teratogen, the Panel shall include in its report an estimate, if such an estimate is feasible, of the probable harm to human health that will result from exposure to the substance.

(C) A Panel appointed under section 2077 of this title shall terminate when it has submitted its report unless the Commission extends the existence of the Panel.

(D) The Federal Advisory Committee Act shall not apply with respect to any Panel established under this section.

(c) Panel report; incorporation into advance notice and final rule

Each Panel's report shall contain a complete statement of the basis for the Panel's determination. The Commission shall consider the report of the Panel and incorporate such report into the advance notice of proposed rulemaking and final rule.

(Pub. L. 92–573, § 31, Oct. 27, 1972, 86 Stat. 1232; Pub. L. 97–35, title XII, § 1206(b), Aug. 13, 1981, 95 Stat. 717; Pub. L. 97–414, § 9(j)(5), Jan. 4, 1983, 96 Stat. 2064.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (a), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (b), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 919, which is classified principally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code,

[1] See References in Text note below.

see Short Title note set out under section 7401 of Title 42 and Tables.

The Public Health Service Act, referred to in subsec. (a), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart 3 of part F of title III of the Public Health Service Act, which was classified to subpart 3 (§ 263b et seq.) of part F of subchapter II of chapter 6A of Title 42, was redesignated as subchapter C of chapter V of act June 25, 1938, ch. 675, the Federal Food, Drug, and Cosmetic Act, by Pub. L. 101–629, § 19(a)(4), Nov. 28, 1990, 104 Stat. 4530, and was transferred to part C (21 U.S.C. 360hh et seq.) of subchapter V of chapter 9 of Title 21, Food and Drugs. Section 355 of the Public Health Service Act, which was classified to section 263c of Title 42, was renumbered as section 531 of act June 25, 1938, ch. 675, by Pub. L. 101–629, § 19(a)(3), (4), 104 Stat. 4530, and transferred to section 360hh of Title 21. For complete classification of the Public Health Service Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (b)(2)(D), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1983—Subsec. (b)(1). Pub. L. 97–414 struck out introductory text ''an advance notice of proposed rulemaking for'' after ''issue'', inserted in subpar. (A) ''an advance notice of proposed rulemaking for'' before ''a consumer'' and in subpar. (B) ''a notice of proposed rulemaking for'' before ''a rule'', and substituted in subpar. (C) ''an advance notice of proposed rulemaking for regulations'' for ''a regulation''.

1981—Pub. L. 97–35 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 applicable with respect to regulations under this chapter and chapters 25 and 30 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

MANUFACTURE OR SALE OF FIREARMS OR FIREARMS AMMUNITION

Pub. L. 94–284, § 3(e), May 11, 1976, 90 Stat. 504, provided that: ''The Consumer Product Safety Commission shall make no ruling or order that restricts the manufacture or sale of firearms, firearms ammunition, or components of firearms ammunition, including black powder or gunpowder for firearms.''

§ 2081. Authorization of appropriations

(a) General authorization of appropriations

(1) In general

There are authorized to be appropriated to the Commission for the purpose of carrying out the provisions of this chapter and any other provision of law the Commission is authorized or directed to carry out—

(A) $118,200,000 for fiscal year 2010;
(B) $115,640,000 for fiscal year 2011;
(C) $123,994,000 for fiscal year 2012;
(D) $131,783,000 for fiscal year 2013; and
(E) $136,409,000 for fiscal year 2014.

(2) Travel allowance

From amounts appropriated pursuant to paragraph (1), there shall be made available $1,200,000 for fiscal year 2010, $1,248,000 for fiscal year 2011, $1,297,000 for fiscal year 2012, $1,350,000 for fiscal year 2013, and $1,403,000 for fiscal year 2014, for travel, subsistence, and related expenses incurred in furtherance of the official duties of Commissioners and employees with respect to attendance at meetings or similar functions, which shall be used by the Commission for such purposes in lieu of acceptance of payment or reimbursement for such expenses from any person—

(A) seeking official action from, doing business with, or conducting activities regulated by, the Commission; or

(B) whose interests may be substantially affected by the performance or nonperformance of the Commissioner's or employee's official duties.

(b) Limitation

No funds appropriated under subsection (a) may be used to pay any claim described in section 2053(i) of this title whether pursuant to a judgment of a court or under any award, compromise, or settlement of such claim made under section 2672 of title 28, or under any other provision of law.

(Pub. L. 92–573, § 32, Oct. 27, 1972, 86 Stat. 1233; Pub. L. 94–284, §§ 2, 5(b), May 11, 1976, 90 Stat. 503, 505; Pub. L. 95–631, § 1, Nov. 10, 1978, 92 Stat. 3742; Pub. L. 97–35, title XII, § 1214, Aug. 13, 1981, 95 Stat. 724; Pub. L. 101–608, title I, § 117, Nov. 16, 1990, 104 Stat. 3121; Pub. L. 103–437, § 5(c)(1), Nov. 2, 1994, 108 Stat. 4582; Pub. L. 110–314, title II, §§ 201(a), (c), 235(c)(4), Aug. 14, 2008, 122 Stat. 3038, 3039, 3075.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, § 201(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) authorized appropriations for fiscal years 1991 and 1992.

Subsec. (b). Pub. L. 110–314, § 201(c), redesignated subsec. (c) as (b), inserted heading, and struck out former subsec. (b), which related to authorization of appropriations for the planning and construction of research, development and testing facilities described in section 2076(h) of this title.

Subsec. (b)(1). Pub. L. 110–314, § 235(c)(4), which directed substitution of ''the appropriate Congressional committees.'' for ''the Committee on Energy and Commerce of the House of Representatives, and by the Committee on Commerce, Science, and Transportation of the Senate.'', could not be executed because of the repeal of subsec. (b) by Pub. L. 110–314, § 201(c). See above.

Subsec. (c). Pub. L. 110–314, § 201(c), redesignated subsec. (c) as (b).

1994—Subsec. (b)(1). Pub. L. 103–437 in introductory provisions substituted ''Committee on Energy and Commerce of the House of Representatives, and by the Committee on Commerce, Science, and Transportation of the Senate'' for ''Committee on Interstate and Foreign Commerce of the House of Representatives, and by the Committee on Commerce of the Senate''.

1990—Subsec. (a). Pub. L. 101–608 added pars. (1) and (2) and struck out former pars. (1) to (9) which specified maximum appropriations authorized for fiscal year ending June 30, 1976, to fiscal year ending Sept. 30, 1983.

1981—Subsec. (a). Pub. L. 97–35 added pars. (8) and (9) and provision following par. (9) relating to payment of accumulated or accrued leave, severance pay, and any other expenses related to a reduction in force in the Commission.

1978—Subsec. (a)(5) to (7). Pub. L. 95–631 added pars. (5) to (7).

1976—Subsec. (a). Pub. L. 94–284, § 2, substituted ''$51,000,000 for the fiscal year ending June 30, 1976, $14,000,000 for the period beginning July 1, 1976, and ending September 30, 1976, $60,000,000 for the fiscal year ending September 30, 1977, and $68,000,000 for the fiscal year ending September 30, 1978'' for ''$55,000,000 for the fiscal year ending June 30, 1973, $59,000,000 for the fiscal

year ending June 30, 1974, and $64,000,000 for the fiscal year ending June 30, 1975''.

Subsec. (c). Pub. L. 94–284, § 5(b), added subsec. (c).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

§ 2082. Interim cellulose insulation safety standard

(a) Applicability of specification of General Services Administration; authority and effect of interim standard; modifications; criteria; labeling requirements

(1) Subject to the provisions of paragraph (2), on and after the last day of the 60-day period beginning on July 11, 1978, the requirements for flame resistance and corrosiveness set forth in the General Services Administration's specification for cellulose insulation, HH–I–515C (as such specification was in effect on February 1, 1978), shall be deemed to be an interim consumer product safety standard which shall have all the authority and effect of any other consumer product safety standard promulgated by the Commission under this chapter. During the 45-day period beginning on July 11, 1978, the Commission may make, and shall publish in the Federal Register, such technical, nonsubstantive changes in such requirements as it deems appropriate to make such requirements suitable for promulgation as a consumer product safety standard. At the end of the 60-day period specified in the first sentence of this paragraph, the Commission shall publish in the Federal Register such interim consumer product safety standard, as altered by the Commission under this paragraph.

(2) The interim consumer product safety standard established in paragraph (1) shall provide that any cellulose insulation which is produced or distributed for sale or use as a consumer product shall have a flame spread rating of 0 to 25, as such rating is set forth in the General Services Administration's specification for cellulose insulation, HH–I–515C.

(3) During the period for which the interim consumer product safety standard established in subsection (a) is in effect, in addition to complying with any labeling requirement established by the Commission under this chapter, each manufacturer or private labeler of cellulose insulation shall include the following statement on any container of such cellulose insulation: ''ATTENTION: This material meets the applicable minimum Federal flammability standard. This standard is based upon laboratory tests only, which do not represent actual conditions which may occur in the home''. Such statement shall be located in a conspicuous place on such container and shall appear in conspicuous and legible type in contrast by typography, layout, and color with other printed matter on such container.

(b) Scope of judicial review

Judicial review of the interim consumer product safety standard established in subsection (a), as such standard is in effect on and after the last day of the 60-day period specified in such subsection, shall be limited solely to the issue of whether any changes made by the Commission under paragraph (1) are technical, nonsubstantive changes. For purposes of such review, any change made by the Commission under paragraph (1) which requires that any test to determine the flame spread rating of cellulose insulation shall include a correction for variations in test results caused by equipment used in the test shall be considered a technical, nonsubstantive change.

(c) Enforcement; violations; promulgation of final standard; procedures applicable to promulgation; revision of interim standard; procedures applicable to revision

(1)(A) Any interim consumer product safety standard established pursuant to this section shall be enforced in the same manner as any other consumer product safety standard until such time as there is in effect a final consumer product safety standard promulgated by the Commission, as provided in subparagraph (B), or until such time as it is revoked by the Commission under section 2058(e) of this title. A violation of the interim consumer product safety standard shall be deemed to be a violation of a consumer product safety standard promulgated by the Commission under section 2058 of this title.

(B) If the Commission determines that the interim consumer product safety standard does not adequately protect the public from the unreasonable risk of injury associated with flammable or corrosive cellulose insulation, it shall promulgate a final consumer product safety standard to protect against such risk. Such final standard shall be promulgated pursuant to section 553 of title 5, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation. The provisions of section 2058(b), (c), and (d) of this title shall apply to any proceeding to promulgate such final standard. In any judicial review of such final standard under section 2060 of this title, the court shall not require any demonstration that each particular finding made by the Commission under section 2058(c) of this title is supported by substantial evidence. The court shall affirm the action of the Commission unless the court determines that such action is not supported by substantial evidence on the record taken as a whole.

(2)(A) Until there is in effect such a final consumer product safety standard, the Commission shall incorporate into the interim consumer product safety standard, in accordance with the provisions of this paragraph, each revision superseding the requirements for flame resistance and corrosiveness referred to in subsection (a) and promulgated by the General Services Administration.

(B) At least 45 days before any revision superseding such requirements is to become effective, the Administrator of the General Services Administration shall notify the Commission of such revision. In the case of any such revision which becomes effective during the period begin-

ning on February 1, 1978, and ending on July 11, 1978, such notice from the Administrator of the General Services Administration shall be deemed to have been made on July 11, 1978.

(C)(i) No later than 45 days after receiving any notice under subparagraph (B), the Commission shall publish the revision, including such changes in the revision as it considers appropriate to make the revision suitable for promulgation as an amendment to the interim consumer product safety standard, in the Federal Register as a proposed amendment to the interim consumer product safety standard.

(ii) The Commission may extend the 45-day period specified in clause (i) for an additional period of not more than 150 days if the Commission determines that such extension is necessary to study the technical and scientific basis for the revision involved, or to study the safety and economic consequences of such revision.

(D)(i) Additional extensions of the 45-day period specified in subparagraph (C)(i) may be taken by the Commission if—

(I) the Commission makes the determination required in subparagraph (C)(ii) with respect to each such extension; and

(II) in the case of further extensions proposed by the Commission after an initial extension under this clause, such further extensions have not been disapproved under clause (iv).

(ii) Any extension made by the Commission under this subparagraph shall be for a period of not more than 45 days.

(iii) Prior notice of each extension made by the Commission under this subparagraph, together with a statement of the reasons for such extension and an estimate of the length of time required by the Commission to complete its action upon the revision involved, shall be published in the Federal Register and shall be submitted to the appropriate Congressional committees.

(iv) In any case in which the Commission takes an initial 45-day extension under clause (i), the Commission may not take any further extensions under clause (i) if each committee referred to in clause (iii) disapproves by committee resolution any such further extensions before the end of the 15-day period following notice of such initial extension made by the Commission in accordance with clause (iii).

(E) The Commission shall give interested persons an opportunity to comment upon any proposed amendment to the interim consumer product safety standard during the 30-day period following any publication by the Commission under subparagraph (C).

(F) No later than 90 days after the end of the period specified in subparagraph (E), the Commission shall promulgate the amendment to the interim consumer product safety standard unless the Commission determines, after consultation with the Secretary of Energy, that—

(i) such amendment is not necessary for the protection of consumers from the unreasonable risk of injury associated with flammable or corrosive cellulose insulation; or

(ii) implementation of such amendment will create an undue burden upon persons who are subject to the interim consumer product safety standard.

(G) The provisions of section 2060 of this title shall not apply to any judicial review of any amendment to the interim product safety standard promulgated under this paragraph.

(d) Reporting requirements of other Federal departments, agencies, etc., of violations

Any Federal department, agency, or instrumentality, or any Federal independent regulatory agency, which obtains information which reasonably indicates that cellulose insulation is being manufactured or distributed in violation of this chapter shall immediately inform the Commission of such information.

(e) Reporting requirements of Commission to Congressional committees; contents, time of submission, etc.

(1) The Commission, no later than 45 days after July 11, 1978, shall submit a report to the appropriate Congressional committees which shall contain a detailed statement of the manner in which the Commission intends to carry out the enforcement of this section.

(2)(A) The Commission, no later than 6 months after the date upon which the report required in paragraph (1) is due (and no later than the end of each 6-month period thereafter), shall submit a report to each committee referred to in paragraph (1) which shall describe the enforcement activities of the Commission with respect to this section during the most recent 6-month period.

(B) The first report which the Commission submits under subparagraph (A) shall include the results of tests of cellulose insulation manufactured by at least 25 manufacturers which the Commission shall conduct to determine whether such cellulose insulation complies with the interim consumer product safety standard. The second such report shall include the results of such tests with respect to 50 manufacturers who were not included in testing conducted by the Commission for inclusion in the first report.

(f) Compliance with certification requirements; implementation; waiver; rules and regulations

(1) The Commission shall have the authority to require that any person required to comply with the certification requirements of section 2063 of this title with respect to the manufacture of cellulose insulation shall provide for the performance of any test or testing program required for such certification through the use of an independent third party qualified to perform such test or testing program. The Commission may impose such requirement whether or not the Commission has established a testing program for cellulose insulation under section 2063(b) of this title.

(2) The Commission, upon petition by a manufacturer, may waive the requirements of paragraph (1) with respect to such manufacturer if the Commission determines that the use of an independent third party is not necessary in order for such manufacturer to comply with the certification requirements of section 2063 of this title.

(3) The Commission may prescribe such rules as it considers necessary to carry out the provisions of this subsection.

(g) Authorization of appropriations

There are authorized to be appropriated, for each of the fiscal years 1978, 1979, 1980, and 1981, such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 92–573, § 35, as added Pub. L. 95–319, § 3(a), July 11, 1978, 92 Stat. 386; amended Pub. L. 103–437, § 5(c)(2), Nov. 2, 1994, 108 Stat. 4582; Pub. L. 110–314, title II, § 235(c)(3), (5), Aug. 14, 2008, 122 Stat. 3074, 3075.)

AMENDMENTS

2008—Subsec. (c)(2)(D)(iii). Pub. L. 110–314, § 235(c)(3), substituted ''the appropriate Congressional committees'' for ''the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives''.

Subsec. (e)(1). Pub. L. 110–314, § 235(c)(5), substituted ''the appropriate Congressional committees'' for ''the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives''.

1994—Subsecs. (c)(2)(D)(iii), (e)(1). Pub. L. 103–437 substituted ''Committee on Energy and Commerce'' for ''Committee on Interstate and Foreign Commerce''.

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE

Pub. L. 95–319, § 2, July 11, 1978, 92 Stat. 386, provided that:

''(a) The Congress finds that—

''(1) existing Federal, State, and local laws and regulations are insufficient to protect the consumer from improperly manufactured cellulose insulation;

''(2) an unreasonably large quantity of cellulose insulation is being distributed that does not meet minimum safety standards;

''(3) an urgent need exists for the expedited setting of interim mandatory Federal standards for the manufacture of cellulose insulation; and

''(4) such standards are reasonably necessary to eliminate or reduce an unreasonable risk of injury to consumers from flammable or corrosive cellulose insulation.

''(b) It is the purpose of the Congress in this Act [enacting this section, amending section 2068 of this title, and enacting provisions set out as notes under sections 2051 and 2082 of this title] to provide an interim mandatory safety standard for cellulose insulation manufactured for use as a consumer product.''

§ 2083. Congressional veto of consumer product safety rules

(a) Transmission to Congress

The Commission shall transmit to the Secretary of the Senate and the Clerk of the House of Representatives a copy of any consumer product safety rule promulgated by the Commission under section 2058 of this title.

(b) Disapproval by concurrent resolution

Any rule specified in subsection (a) shall not take effect if—

(1) within the 90 calendar days of continuous session of the Congress which occur after the date of the promulgation of such rule, both Houses of the Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows (with the blank spaces appropriately filled): ''That the Congress disapproves the consumer product safety rule which was promulgated by the Consumer Product Safety Commission with respect to and which was transmitted to the Congress on and disapproves the rule for the following reasons: .''; or

(2) within the 60 calendar days of continuous session of the Congress which occur after the date of the promulgation of such rule, one House of the Congress adopts such concurrent resolution and transmits such resolution to the other House and such resolution is not disapproved by such other House within the 30 calendar days of continuous session of the Congress which occur after the date of such transmittal.

(c) Presumptions from Congressional action or inaction

Congressional inaction on, or rejection of, a concurrent resolution of disapproval under this section shall not be construed as an expression of approval of the rule involved, and shall not be construed to create any presumption of validity with respect to such rule.

(d) Continuous session of Congress

For purposes of this section—

(1) continuity of session is broken only by an adjournment of the Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the periods of continuous session of the Congress specified in subsection (b).

(Pub. L. 92–573, § 36, as added Pub. L. 97–35, title XII, § 1207(a), Aug. 13, 1981, 95 Stat. 718.)

EFFECTIVE DATE

Section applicable with respect to consumer product safety rules under this chapter and regulations under chapters 25 and 30 of this title promulgated after Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

§ 2084. Information reporting

(a) Notification of settlements or judgments

If a particular model of a consumer product is the subject of at least 3 civil actions that have been filed in Federal or State court for death or grievous bodily injury which in each of the 24-month periods defined in subsection (b) result in either a final settlement involving the manufacturer or a court judgment in favor of the plaintiff, the manufacturer of such product shall, in accordance with subsection (c), report to the Commission each such civil action within 30 days after the final settlement or court judgment in the third of such civil actions, and, within 30 days after any subsequent settlement or judgment in that 24-month period, any other such action.

(b) Calculation of 24-month periods

The 24-month periods referred to in subsection (a) are the 24-month period commencing on January 1, 1991, and subsequent 24-month periods beginning on January 1 of the calendar year that is two years following the beginning of the previous 24-month period.

(c) Information required to be reported

(1) The information required by subsection (a) to be reported to the Commission, with respect

to each civil action described in subsection (a), shall include and in addition to any voluntary information provided under paragraph (2) shall be limited to the following:

(A) The name and address of the manufacturer.

(B) The model and model number or designation of the consumer product subject to the civil action.

(C) A statement as to whether the civil action alleged death or grievous bodily injury, and in the case of an allegation of grievous bodily injury, a statement of the category of such injury.

(D) A statement as to whether the civil action resulted in a final settlement or a judgment in favor of the plaintiff.

(E) in[1] the case of a judgment in favor of the plaintiff, the name of the civil action, the number assigned the civil action, and the court in which the civil action was filed.

(2) A manufacturer furnishing the report required by paragraph (1) may include (A) a statement as to whether any judgment in favor of the plaintiff is under appeal or is expected to be appealed or (B) any other information which the manufacturer chooses to provide. A manufacturer reporting to the Commission under subsection (a) need not admit or may specifically deny that the information it submits reasonably supports the conclusion that its consumer product caused a death or grievous bodily injury.

(3) No statement of the amount paid by the manufacturer in a final settlement shall be required as part of the report furnished under subsection (a), nor shall such a statement of settlement amount be required under any other section of this chapter.

(d) Report not deemed an admission of liability

The reporting of a civil action described in subsection (a) by a manufacturer shall not constitute an admission of—

(1) an unreasonable risk of injury,

(2) a defect in the consumer product which was the subject of such action,

(3) a substantial product hazard,

(4) an imminent hazard, or

(5) any other admission of liability under any statute or under any common law.

(e) Definitions

For purposes of this section:

(1) A grievous bodily injury includes any of the following categories of injury: mutilation, amputation, dismemberment, disfigurement, loss of important bodily functions, debilitating internal disorder, severe burn, severe electric shock, and injuries likely to require extended hospitalization.

(2) For purposes of this section,[2] a particular model of a consumer product is one that is distinctive in functional design, construction, warnings or instructions related to safety, function, user population, or other characteristics which could affect the product's safety related performance.

(Pub. L. 92–573, §37, as added Pub. L. 101–608, title I, §112(b), Nov. 16, 1990, 104 Stat. 3115.)

[1] So in original. Probably should be capitalized.

[2] So in original.

CONGRESSIONAL REPORTS

Pub. L. 101–608, title I, §112(f), Nov. 16, 1990, 104 Stat. 3117, provided that:

''(1) The Consumer Product Safety Commission shall report to the Congress on the extent to which reports made to the Commission under section 37 of the Consumer Product Safety Act [15 U.S.C. 2084] have assisted the Commission in carrying out its responsibilities under such Act [15 U.S.C. 2051 et seq.]. The report—

''(A) shall provide aggregate data and not the details and contents of individual reports filed with the Commission pursuant to such section 37,

''(B) shall not disclose the brand names of products included in reports under such section 15(b) or 37 [15 U.S.C. 2064(b), 2084] or the number of reports under such sections for particular models or classes of products, and

''(C) shall include—

''(i) a comparison of the number of reports received under such section 37 and the number of reports received under section 15(b) of such Act,

''(ii) a comparison of the number of reports filed with the Commission before the date of the enactment of this Act [Nov. 16, 1990] and after such date, and

''(iii) the total number of settlements and court judgments reported under such section 37 and the total number of rulemakings and enforcement actions undertaken in response to such reports,

''(iv) recommendations of the Commission for additional improvements in reporting under the Consumer Product Safety Act.

''(2) The first report under paragraph (1) shall be due February 1, 1992, and the second such report shall be due April 1, 1993.''

§ 2085. Low-speed electric bicycles

(a) Construction

Notwithstanding any other provision of law, low-speed electric bicycles are consumer products within the meaning of section 2052(a)(1)[1] of this title and shall be subject to the Commission regulations published at section 1500.18(a)(12) and part 1512 of title 16, Code of Federal Regulations.

(b) Definition

For the purpose of this section, the term ''low-speed electric bicycle'' means a two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.

(c) Promulgation of requirements

To further protect the safety of consumers who ride low-speed electric bicycles, the Commission may promulgate new or amended requirements applicable to such vehicles as necessary and appropriate.

(d) Preemption

This section shall supersede any State law or requirement with respect to low-speed electric bicycles to the extent that such State law or requirement is more stringent than the Federal law or requirements referred to in subsection (a).

(Pub. L. 92–573, §38, as added Pub. L. 107–319, §1, Dec. 4, 2002, 116 Stat. 2776.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 2052(a)(1) of this title, referred to in subsec. (a), was redesignated section 2052(a)(5) of this title by Pub. L. 110–314, title II, § 235(b)(4), Aug. 14, 2008, 122 Stat. 3074.

§ 2086. Prohibition on industry-sponsored travel

Notwithstanding section 1353 of title 31 and section 2076(b)(6) of this title, no Commissioner or employee of the Commission shall accept travel, subsistence, or related expenses with respect to attendance by a Commissioner or employee at any meeting or similar function relating to official duties of a Commissioner or an employee, from a person—

(1) seeking official action from, doing business with, or conducting activities regulated by, the Commission; or

(2) whose interests may be substantially affected by the performance or nonperformance of the Commissioner's or employee's official duties.

(Pub. L. 92–573, § 39, as added Pub. L. 110–314, title II, § 206(a), Aug. 14, 2008, 122 Stat. 3044.)

§ 2087. Whistleblower protection

(a) No manufacturer, private labeler, distributor, or retailer,[1] may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee, whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this chapter or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under any such Acts;

(2) testified or is about to testify in a proceeding concerning such violation;

(3) assisted or participated or is about to assist or participate in such a proceeding; or

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this chapter or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under any such Acts.

(b)(1) A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2)(A) Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant and the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B)(i) The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3)(A) Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this sub-

[1] So in original. The comma probably should not appear.

section may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

(i) to take affirmative action to abate the violation;

(ii) to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) to provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys' fee, not exceeding $1,000, to be paid by the complainant.

(4) If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(B). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

(A) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(B) the amount of back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(5)(A) Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(6) Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(7)(A) A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(d) Subsection (a) shall not apply with respect to an employee of a manufacturer, private labeler, distributor, or retailer who, acting without direction from such manufacturer, private labeler, distributor, or retailer (or such person's agent), deliberately causes a violation of any requirement relating to any violation or alleged violation of any order, regulation, or consumer product safety standard under this chapter or any other law enforced by the Commission.

(Pub. L. 92–573, § 40, as added Pub. L. 110–314, title II, § 219(a), Aug. 14, 2008, 122 Stat. 3062.)

§ 2088. Financial responsibility

(a) Identification and determination of bond

The Commission, in consultation with U.S. Customs and Border Protection and other relevant Federal agencies, shall identify any consumer product, or other product or substance that is regulated under this chapter or any other Act enforced by the Commission, for which the cost of destruction would normally exceed bond amounts determined under sections 1623 and 1624 of title 19 and shall recommend to U.S. Customs and Border Protection a bond amount sufficient to cover the cost of destruction of such products or substances.

(b) Study of requiring escrow for recalls and destruction of products

(1) Study

The Comptroller General shall conduct a study to determine the feasibility of requiring—

(A) the posting of an escrow, proof of insurance, or security sufficient in amount to cover the cost of destruction of a domestically-produced product or substance regulated under this chapter or any other Act enforced by the Commission; and

(B) the posting of an escrow, proof of insurance, or security sufficient in amount to cover the cost of an effective recall of a product or substance, domestic or imported, regulated under this chapter or any other Act enforced by the Commission.

(2) Report

Not later than 180 days after August 14, 2008, the Comptroller General shall transmit to the appropriate Congressional committees a report on the conclusions of the study required under paragraph (1), including an assessment of whether such an escrow requirement could be implemented and any recommendations for such implementation.

(Pub. L. 92–573, § 41, as added Pub. L. 110–314, title II, § 224(a), Aug. 14, 2008, 122 Stat. 3069.)

§ 2089. All-terrain vehicles

(a) In general

(1) Mandatory standard

Notwithstanding any other provision of law, within 90 days after August 14, 2008, the Commission shall publish in the Federal Register as a mandatory consumer product safety standard the American National Standard for Four Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements developed by the Specialty Vehicle Institute of America (American National Standard ANSI/SVIA–1–2007). The standard shall take effect 150 days after it is published.

(2) Compliance with standard

After the standard takes effect, it shall be unlawful for any manufacturer or distributor to import into or distribute in commerce in the United States any new assembled or unassembled all-terrain vehicle unless—

(A) the all-terrain vehicle complies with each applicable provision of the standard;

(B) the ATV is subject to an ATV action plan filed with the Commission before August 14, 2008, or subsequently filed with and approved by the Commission, and bears a label certifying such compliance and identifying the manufacturer, importer or private labeler and the ATV action plan to which it is subject; and

(C) the manufacturer or distributor is in compliance with all provisions of the applicable ATV action plan.

(3) Violation

The failure to comply with any requirement of paragraph (2) shall be deemed to be a failure to comply with a consumer product safety standard under this chapter and subject to all of the penalties and remedies available under this chapter.

(4) Compliant models with additional features

Paragraph (2) shall not be construed to prohibit the distribution in commerce of new all-terrain vehicles that comply with the requirements of that paragraph but also incorporate characteristics or components that are not covered by those requirements. Any such characteristics or components shall be subject to the requirements of section 2064 of this title.

(b) Modification of standard

(1) ANSI revisions

If the American National Standard ANSI/SVIA–1–2007 is revised through the applicable consensus standards development process after the date on which the product safety standard for all-terrain vehicles is published in the Federal Register, the American National Standards Institute shall notify the Commission of the revision.

(2) Commission action

Within 120 days after it receives notice of such a revision by the American National Standards Institute, the Commission shall issue a notice of proposed rulemaking in accordance with section 553 of title 5 to amend the product safety standard for all-terrain vehicles to include any such revision that the Commission determines is reasonably related to the safe performance of all-terrain vehicles, and notify the Institute of any provision it has determined not to be so related. The Commission shall promulgate an amendment to the standard for all-terrain vehicles within 180 days after the date on which the notice of proposed rulemaking for the amendment is published in the Federal Register.

(3) Unreasonable risk of injury

Notwithstanding any other provision of this chapter, the Commission may, pursuant to sections 2056 and 2058 of this title, amend the product safety standard for all-terrain vehicles to include any additional provision that the Commission determines is reasonably necessary to reduce an unreasonable risk of injury associated with the performance of all-terrain vehicles.

(4) Certain provisions not applicable

Sections 2056 and 2058 of this title shall not apply to promulgation of any amendment of the product safety standard under paragraph (2). Judicial review of any amendment of the standard under paragraph (2) shall be in accordance with chapter 7 of title 5.

(c) Requirements for 3-wheeled all-terrain vehicles

Until a mandatory consumer product safety standard applicable to 3-wheeled all-terrain vehicles promulgated pursuant to this chapter is in effect, new 3-wheeled all-terrain vehicles may not be imported into or distributed in commerce in the United States. Any violation of this subsection shall be considered to be a violation of section 2068(a)(1) of this title and may also be enforced under section 2066 of this title.

(d) Further proceedings

(1) Deadline

The Commission shall issue a final rule in its proceeding entitled ''Standards for All Terrain Vehicles and Ban of Three-wheeled All Terrain Vehicles''.

(2) Categories of youth ATVs

In the final rule, the Commission, in consultation with the National Highway Traffic Safety Administration, may provide for a multiple factor method of categorization that, at a minimum, takes into account—

(A) the weight of the ATV;

(B) the maximum speed of the ATV;

(C) the velocity at which an ATV of a given weight is traveling at the maximum speed of the ATV;

(D) the age of children for whose operation the ATV is designed or who may reasonably be expected to operate the ATV; and

(E) the average weight of children for whose operation the ATV is designed or who may reasonably be expected to operate the ATV.

(3) Additional safety standards

In the final rule, the Commission, in consultation with the National Highway Traffic Safety Administration, shall review the standard published under subsection (a)(1) and establish additional safety standards for all-terrain vehicles to the extent necessary to protect the public health and safety. As part of its review, the Commission shall consider, at a minimum, establishing or strengthening standards on—

(A) suspension;

(B) brake performance;

(C) speed governors;

(D) warning labels;

(E) marketing; and

(F) dynamic stability.

(e) Definitions

In this section:

(1) All-terrain vehicle or ATV

The term ''all-terrain vehicle'' or ''ATV'' means—

(A) any motorized, off-highway vehicle designed to travel on 3 or 4 wheels, having a seat designed to be straddled by the operator and handlebars for steering control; but

(B) does not include a prototype of a motorized, off-highway, all-terrain vehicle or other motorized, off-highway, all-terrain vehicle that is intended exclusively for research and development purposes unless the vehicle is offered for sale.

(2) ATV action plan

The term ''ATV action plan'' means a written plan or letter of undertaking that describes actions the manufacturer or distributor agrees to take to promote ATV safety, including rider training, dissemination of safety information, age recommendations, other policies governing marketing and sale of the ATVs, the monitoring of such sales, and other safety related measures, and that is substantially similar to the plans described under the heading ''The Undertakings of the Companies in the Commission Notice'' published in the Federal Register on September 9, 1998 (63 FR 48199–48204).

(Pub. L. 92–573, § 42, as added Pub. L. 110–314, title II, § 232(a), Aug. 14, 2008, 122 Stat. 3071.)

CODIFICATION

August 14, 2008, referred to in subsec. (a)(2)(B), was in the original ''the date of enactment of the Act'' and was translated as reading ''the date of enactment of the Consumer Product Safety Improvement Act of 2008'', which enacted this section, to reflect the probable intent of Congress.

EFFECTIVE DATE

Subsec. (c) of this section effective on the date that is 30 days after Aug. 14, 2008, see section 239(a) of Pub. L. 110–314, set out as an Effective Date of 2008 Amendment note under section 2051 of this title.

DEADLINE FOR RULE BY CONSUMER PRODUCT SAFETY COMMISSION ON STANDARDS FOR ALL TERRAIN VEHICLES

Pub. L. 112–28, § 9, Aug. 12, 2011, 125 Stat. 282, provided that: ''The Commission shall issue the final rule described in section 42(d) of the Consumer Product Safety Act (15 U.S.C. 2089(d)) not later than 1 year after the date of enactment of this Act [Aug. 12, 2011].''

CHAPTER 48—HOBBY PROTECTION

§ 2101. Marking requirements

(a) Political items

The manufacture in the United States, or the importation into the United States, for introduction into or distribution in commerce of any imitation political item which is not plainly and permanently marked with the calendar year in which such item was manufactured, is unlawful and is an unfair or deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) Coins and other numismatic items

The manufacture in the United States, or the importation into the United States, for introduction into or distribution in commerce, or the sale in commerce of any imitation numismatic item which is not plainly and permanently marked ''copy'', is unlawful and is an unfair or deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(c) Rules and regulations

The Federal Trade Commission shall prescribe rules for determining the manner and form in which items described in subsection (a) or (b) shall be permanently marked.

(d) Provision of assistance or support

It shall be a violation of subsection (a) or (b) for a person to provide substantial assistance or support to any manufacturer, importer, or seller if that person knows or should have known that the manufacturer, importer, or seller is engaged in any act or practice that violates subsection (a) or (b).

(e) Exemption

Subsections (a)[1] (b), and (d), and regulations under subsection (c), shall not apply to any com-

[1] So in original. Probably should be followed by a comma.